#### D.P.U. 96-50-C (Phase I)

Investigation by the Department of Public Utilities on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.P.U. Nos. 944 through 970, filed with the Department on May 17, 1996, to become effective June 1, 1996, by Boston Gas Company; and investigation of the proposal of Boston Gas Company to implement performance-based ratemaking, and a plan to exit the merchant function.

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# ORDER ON MOTION OF BOSTON GAS COMPANY FOR RECONSIDERATION, CLARIFICATION AND RECALCULATION

# I. INTRODUCTION

#### A. Procedural History

On November 29, 1996, the Department of Public Utilities ("Department") issued its Order in Boston Gas Company, D.P.U. 96-50 (Phase I) (1996) ("Order"). On December 19, 1996, pursuant to 220 C.M.R. §§ 1.11 (10) and 1.11 (9), Boston Gas Company ("Boston Gas" or "Company") filed with the Department a Motion for Reconsideration, Clarification, and Recalculation of the Department's Order ("Company Motion"), accompanied by new exhibits and testimony of six new witnesses. On January 7, 1997, following the December 19, 1996 deadline for filing a motion for reconsideration, the Company submitted to the Department testimony of two additional new witnesses, supplemental testimony of one witness, and additional new exhibits as part of the Company's Motion.

Boston Gas requested reconsideration of the Department's rejection of the Partial Settlement submitted on November 15, 1996 (Company Motion at 11-18). The Company also requested reconsideration or recalculation of the following items in the Company's cost of service: (1) exclusion from rate base and associated depreciation/amortization expense of 1996 investments in system renewal and information technology; (2) return on equity, and (3) expense allowances related to (a) union wages, (b) non-union salaries, (c) FICA taxes, (d) overtime expense, (e) QUality, Efficiency, Service, and Teamwork ("QUEST") payroll taxes, (f) bad debt, (g) cellular telephones, (h) rate case expense, (i) amortization of QUEST, (j) pension, (k) post-retirement benefits other than pensions ("PBOP") and (l) property taxes (id. at 18-19). Regarding the Department's decision on performance-based ratemaking

("PBR"), Boston Gas requested reconsideration and/or clarification of the following items:

(1) accumulated inefficiencies factor; (2) inclusion of QUEST savings and expected increase in throughput in consumer dividend; (3) telephone service factor ("TSF"); (4) customer complaint factor; and (5) customer charges (id. at 32-50).

Additionally, Boston Gas requested that the Department clarify its directives concerning margin sharing (id. at 52-54). With respect to capacity allocation and transportation terms and conditions, the Company requested reconsideration and/or clarification of: (1) assignment of downstream assets; (2) financial security requirements for suppliers; (3) disbursement of revenues accruing from balancing penalties; (4) extension of upstream asset contracts; (5) price for interim sales service; and (6) <u>force majeure</u> (id. at 54-55). Boston Gas requested a hearing on the Company's Motion (id. at 5).

On or before January 17, 1997, the Department of the Attorney General ("Attorney General"), Associated Industries of Massachusetts ("AIM"), Bay State Gas Company ("Bay State"), Commonwealth of Massachusetts Division of Energy Resources ("DOER"), The Energy Consortium ("TEC"), Global Petroleum Corp., Low-Income Intervenors, the Marketer Group ("TMG"), Massachusetts Oil Heat Council ("MOC") and United States Gypsum ("US Gypsum"), all intervenors in the proceeding, filed responses to the Company Motion. The Department conducted a hearing on this matter at its offices on March 7, 1997.

# B. Boston Gas Company, D.P.U. 96-50-A

On December 2, 1996, the Company filed a Motion for Reconsideration ("December 2, 1996 Motion") seeking reconsideration of the Department's directive to

For purposes of its response to the Company Motion, TMG consists of the following intervenors: Eastern Energy Marketing, Inc.; ERI Services, Inc.; PanEnergy Trading and Market Services, L.L.C.; and Utilicorp United, Inc.

remove \$339,507 from Rate Schedule G-54 and to reallocate the amount to the remaining commercial and industrial customers. With its December 2, 1996 Motion, the Company submitted an alternative set of tariffs. On December 9, 1996, the Department issued its Order granting the December 2, 1996 Motion. <u>Boston Gas Company</u>, D.P.U. 96-50-A (Phase I) (1996).

The Department found that the Company presented cost allocation information that could only have been submitted with the Company's compliance filing, and, thus, was not available at the time the Department issued its Order. D.P.U. 96-50-A at 4. Further, the Department found that this information would have a significant impact on the allocation of revenues from the G-54 Rate Schedule. <u>Id.</u> Accordingly, the Department granted the Company's request for reconsideration, and found that the alternative tariffs submitted by the Company comply with the Department's Order as reconsidered. <u>Id.</u>

## C. Boston Gas Company, D.P.U. 96-50-B

On February 13, 1997, the Department issued its Interlocutory Order on the Attorney General's Motion to Strike Extra-Record Evidence and Testimony and Objection to Reconsideration of the Partial Settlement, and the Company's Request for Hearing and Prehearing Conference. Boston Gas Company, D.P.U. 96-50-B (Phase I) (1997). The Department sustained the Objection of the Attorney General to Reconsideration of the Partial Settlement. Id. at 12-13. The Department found that express language in the Partial Settlement bars the Company from seeking Department reconsideration of its rejection of the Partial Settlement. Id. at 12-13.

The Department also granted the Attorney General's Motion to Strike Extra-Record Evidence and Testimony. The Department found that the new exhibits and testimony

submitted with the Company's Motion did not provide unknown or undisclosed facts that would have a significant impact on the decision already rendered. D.P.U. 96-50-B at 8. This finding was made after review of all new proffered exhibits and testimony. Further, with respect to the new information that the Company characterized as updates, the Department found no extraordinary or compelling circumstances which would warrant either reopening the record or otherwise considering the new exhibits and testimony at issue. Id. at 9. Accordingly, the Department found that the proffered new exhibits and testimony did not constitute the type of evidence that the Department can consider on reconsideration, and excluded this information from the record.<sup>2</sup> Id. at 9-10.

Based on the Department's determination to strike the Company's new exhibits and new testimony, the Department found no reason to conduct a prehearing conference. <u>Id.</u> at 14-15. In granting the request for a hearing, the Department restricted the hearing to legal and factual argument based on record evidence in the proceeding. <u>Id.</u>

## II. PROCEDURAL RULINGS

#### A. Motion to Appoint and Involve Settlement Intervention Staff

#### 1. Introduction

On March 6, 1997, the Company filed a Motion Requesting the Appointment and Involvement of a Settlement Intervention Staff ("Motion for SIS") to assist in the resolution of the Company's Motion. On March 14, 1997, the Attorney General, Enron Capital & Trade Resources Corp. ("Enron"), and Alberta Energy Company Limited, Producers

In accordance with the Company's offer of proof at the March 7, 1997 hearing, the Department hereby marks for identification as Exhibits BGC-246 through BGC-296 the information excluded from the record pursuant to the Department's order in D.P.U. 96-50-B.

Marketing Limited, Progas Limited, and TransCanada Gas Services (collectively, "Canadian Marketers") filed responses to the Motion for SIS. On March 17, the Company filed a letter describing a settlement filed with the Supreme Judicial Court of the Commonwealth ("SJC") involving the Commissioner of Insurance of the Commonwealth of Massachusetts and the Electric Mutual Liability Insurance Company ("EMLICO"). On April 7, 1997, the Attorney General filed a response to the Company's March 17, 1997 letter.

# 2. Positions of the Parties

## a. The Company

The Company argues that G.L. c. 30A, §10 authorizes the Department to settle adjudicatory proceedings using informal means (Motion for SIS at 3). The Company further argues that nothing in G.L. c. 25 restricts the Department's ability to use informal means of dispute resolution to a particular phase of a proceeding (Motion for SIS at 3). Boston Gas asserts that the Department established the SIS to formalize its approach to settlements and to foster informal dispute resolution. The Company further asserts that the Department has accepted the contributions of SIS at all stages of the adjudicatory process (Motion for SIS at 4, citing Housatonic Water Works Company, D.P.U. 90-284 (1991); Western Massachusetts Electric Company, D.P.U. 92-13 (1992); Duck Farm Springs Water Company, D.P.U. 89-259-A (1991)). The Company avers that the Department's encouragement of settlements is consistent with legislative and judicial encouragement of this

During the hearing on the Company's Motion, counsel for Boston Gas represented that he and the Attorney General were involved in settlement negotiations in a similar proceeding pending before another state administrative agency (Tr. 25, at 29-30). Counsel for the Company further indicated that he could not divulge any additional information about this settlement until the process was complete, but that he would do so as soon as possible (<u>id.</u> at 40-41). The Company's March 17, 1997 letter describes the settlement alluded to at the hearing on the Company's Motion.

process (Motion for SIS at 4).

Boston Gas maintains that the following "striking parallels" exist between the instant proceeding and the EMLICO dispute before the Division of Insurance: (1) a final order has been issued in both matters: (2) third parties have sought to reopen proceedings based on new evidence; and (3) the respective agencies have taken further steps and the administrative proceedings are still open (Company Letter of March 17, 1997, at 1). The Company suggests that the only difference in the proceedings is that in the EMLICO matter, there were actions pending before the SJC to compel discovery and further testimony (id.).

The Company concludes that, in the instant matter, settlement constitutes a superior alternative to litigation of the Company's Motion because (1) intervenors representing all customer groups supported the Partial Settlement, (2) the Attorney General has raised procedural rather than substantive objections to reconsideration of the Partial Settlement, and (3) Boston Gas is optimistic that a settlement, including resolution of Phase II issues, can be reached (Motion for SIS at 5-6). The Company requests that the Department defer consideration of the Company Motion until the possibility of settlement has been fully explored (id. at 1). Alternatively, the Company proposes that Phase II issues could be settled (Company Letter of March 17, 1997, at 2).

#### b. Attorney General

The Attorney General opposes the Company's Motion for SIS for several reasons.

The Attorney General maintains that the Company is endeavoring to reopen, relitigate and reargue issues decided in Phase I under the guise of an attempt to settle both Phase I and Phase II issues (Attorney General Response at 1). The Attorney General asserts that the Company should not have a "third bite at the apple" for Phase I since (1) the time to settle

Phase I issues was prior to the issuance of the Order, (2) the proposed settlement process would result in an inefficient use of both Department and intervenors' resources, and (3) there are no Phase I issues remaining to be settled (id. at 2).

The Attorney General also maintains that there is no merit to the Company's reliance on the EMLICO settlement, since the circumstances resulting in the settlement of the EMLICO case do not parallel in any way the circumstances in the instant case (Attorney General Response to March 17, 1997 Company Letter at 1-2). The Attorney General states that though the EMLICO petition may result in the mooting of court enforcement actions initiated by the Insurance Commissioner, the EMLICO petition did not involve an adjudicatory proceeding, nor did it involve a settlement or alteration of a final agency order (id. at 2).

#### c. Enron

Enron supports the Company's Motion for SIS, and states that it has long taken the position that the design of a workable unbundling program is best determined through settlement negotiations among interested parties (Enron Response).

## d. Canadian Marketers

The Canadian Marketers state that they take no position on the appointment of Department settlement staff, but maintain that certain Phase II issues are not nearly ripe for resolution (Canadian Marketers Response).

# 3. <u>Analysis and Findings</u>

Although Boston Gas maintains that the Department has encouraged settlement in all stages of the adjudicatory process, the Company has not identified any instance in which the Department, or any other administrative agency in the Commonwealth, has engaged in a

settlement of a motion for reconsideration of a final agency order. The SIS was not a signatory to the settlement reached in D.P.U. 90-284. D.P.U. 90-284, at 4.<sup>4</sup> In D.P.U. 92-13, the Department appointed SIS prior to the issuance of a final order. In D.P.U 89-259-A, the Department invited parties to avail themselves of SIS to address issues involving both the compliance phase of D.P.U. 89-259, and a related petition filed pursuant to G.L. c. 164, § 93, and docketed as <u>Duck Farm Springs Water Company</u>, D.P.U. 91-65. D.P.U. 89-259-A at 2.

The Department continues to encourage the use of settlement as a tool for dispute resolution. However, contrary to the Company's assertion, there is no Department precedent for appointing SIS after the issuance of a final Department order, and prior to an appeal to the SJC. Moreover, the Department finds that appointing SIS to address post-Order motions would undermine the finality of Department orders. Based on the foregoing, the Department denies the Company's Motion for SIS. However, the Department supports the use of a settlement process to resolve Phase II issues.

## B. Attorney General Objection to Proposed Exhibit BGC-297

#### 1. Introduction

At the March 7, 1997 hearing on the Company's Motion, the Company requested that the Department mark for identification as Exhibit BGC-297, a set of seven schedules that the Company has characterized as updates of information presented during the proceeding (Tr. 25, at 27-28). On March 14, 1997, the Attorney General submitted a letter to the

While the SIS was a signatory to a settlement approved in <u>Housatonic Water Works</u> <u>Company</u>, D.P.U. 90-284-B (1995), that settlement was reached by the parties in that proceeding following the SJC decision to vacate the Department's decision in D.P.U. 90-284. D.P.U. 90-284-B at 1-2.

Department stating his objection to the marking and admission of proposed Exhibit BGC-297 ("Attorney General Objection, March 14, 1997").

## 2. Position of the Attorney General

The Attorney General maintains that the information in the proposed exhibit does not contain updates, but the same "new evidence" that the Department struck pursuant to its Order in D.P.U. 96-50-B (Attorney General Objection, March 14, 1997 at 1). The Attorney General asserts that the Company has failed to meet the reconsideration standard for exceptional circumstances because the information in the proposed exhibit is (1) new evidence, not updates, (2) in some instances, includes information not outside of the control of the Company, (3) controversial, and (4) consists of reargument (id. at 1 n.1). The Company did not respond to the Attorney General's objection.

# 3. Analysis and Findings

The Company has characterized the exhibit at issue as updated information. The Department routinely permits the record to remain open after the close of hearings for receipt of updated information on non-controversial items that have been examined adequately on the record, such as rate case expense and property taxes. See, e.g., Milford Water Company, D.P.U. 92-101, at 36 (1992); Bay State Gas Company, D.P.U. 89-81, at 47 (1989). The Department previously has stated that, in a rate case, it will allow companies to file "up to the minute" adjustments, but the line must be drawn when the final Order is issued. Western Massachusetts Electric Company, D.P.U 85-270-C at 20 (1987). The filing of updated

Even when updates are allowed, a company is required explicitly to advise parties of its intention to file updates at the time it files its direct case or as soon as the need is identified to afford due process. <u>Bay State Gas Company</u>, D.P.U. 89-81, at 47-48 (1989); Western Massachusetts Electric Company, D.P.U. 86-280-A at 17.

information also may be permissible in extraordinary or compelling circumstances.

Bay State Gas Company, D.P.U. 89-81, at 45 (1989); Berkshire Gas Company,

D.P.U. 905-C at 6-7 (1982).<sup>6</sup> Such updates are based on information external to a company, and almost entirely outside the control of the company. Western Massachusetts Electric Company, D.P.U. 86-280-A at 17 (1987).

In the instant proceeding, the Department accepted updates for rate case expense and property taxes (Exhs. AG-199 (supp.); DPU-21 (supp.)). However, the Department excluded from consideration the new testimony and new exhibits that the Company filed with its Motion. D.P.U. 96-50-B at 8-10. Further, the exhibit proffered by the Company constitutes the same kind of information that the Department excluded from consideration pursuant to D.P.U. 96-50-B. The new exhibit at issue that the Company describes as updated information represents yet another attempt by the Company to reargue issues long after the record has closed in the proceeding and a final Order issued. The Department also finds that the circumstances surrounding the Company's updates are not extraordinary nor compelling, which would warrant either reopening the proceeding or otherwise considering the evidence at issue. Accordingly, the Department hereby sustains the Attorney General Objection to the Marking and Admission of the Proposed Exhibit BGC-297.

In <u>Berkshire Gas Company</u>, D.P.U. 905 (1982), the expiration of a union contract, and resulting strike, shortly before the date of issuance of that order prevented the company from providing the Department with actual payroll increases pursuant to a ratified union contract until several days after the issuance of the Department's order. D.P.U. 905-C at 3, 6-7.

In accordance with the Company's offer of proof filed on March 13, 1997, the Department hereby marks for identification as Exhibit BGC-297 the exhibit proffered at the March 7, 1997 hearing on the Company's Motion.

# C. <u>Attorney General Motion to Strike the Chart and Legal and/or Factual Argument Related Thereto</u>

#### 1. Introduction

During the hearing on the Company's Motion, Boston Gas presented, <u>inter alia</u>, legal and factual argument which relied, in part, on a chart analyzing the Company's incremental revenues and costs over a six-year period through the year 2000 (Tr. 28, at 12, 16). On March 12, 1997, Boston Gas submitted a letter to the Department indicating that, contrary to the Company's assertions at the hearing, the chart presented at the hearing was derived from extra-record information, as a result of a misunderstanding between Company counsel and staff. On March 19, 1997, the Attorney General filed a Motion to Strike the Chart and Legal and/or Factual Argument Related Thereto ("Motion to Strike"). On March 21, 1997, the Company filed a response to the Motion to Strike.

## 2. Positions of the Parties

#### a. Attorney General

The Attorney General states that during the hearing on the Company's Motion,
Boston Gas utilized a chart containing updated information from Boston Gas's 1996 strategic
plan that was not part of the record in this case (Motion to Strike at 1). The Attorney
General also states that the Company admitted in its March 12, 1997 letter to the Department
that the chart presented at the that hearing utilized information that was not derived from the
record in the proceeding (id. at 1). The Attorney General avers that the Company's use of
this chart violates the Department's directive in D.P.U. 96-50-B restricting legal and factual
argument to record evidence only (id. at 1, citing D.P.U. 96-50-B at 14-15). Accordingly,
the Attorney General asserts that the Department must strike the chart and the legal and
factual argument related thereto (Motion to Strike at 1-2).

# b. The Company

The Company acknowledges the Attorney General's concerns, and offers to withdraw the 1996 data (Company Response to Motion to Strike at 1). Boston Gas, however, argues that every substantive point put forth by the Company at the hearing of March 7, 1997 applies equally to the 1995 data, and that the arguments are valid and merit serious consideration by the Department (id. at 1-2).

## 3. Analysis and Findings

As indicated in Section I.B, above, the Department granted Boston Gas's request for a hearing on the Company's Motion. In accordance with the parameters set forth by the Department for the conduct of the hearing, the Company had notice that any legal and factual argument presented at the hearing must be based solely on record evidence. The Company presented argument at the March 7, 1997 that relied on a chart and represented that the chart was developed from record evidence. However, the Company admitted after the hearing that a "misunderstanding" has resulted in the use of extra-record data. Given the longstanding and extensive efforts of the Company to introduce new evidence that were rejected by the Department, the Department is hard pressed to accept the Company's explanation that a "misunderstanding" could have resulted between Company counsel and staff about the use of extra record evidence in the preparation of the chart for the March 7, 1997 hearing. After granting the Attorney General's Motion to Strike Extra-Record Evidence and Testimony, sustaining the Attorney General's objection to admission of Exhibit BGC-297, and determining that the hearing on the Company's Motion would be restricted to legal and factual arguments that are derived from record evidence, the Department cannot accord any weight to the arguments put forth by the Company that rely on extra-record information.

Accordingly, the Department hereby grants the Attorney General's Motion to Strike Chart and Legal/Factual Argument Related Thereto.

# III. STANDARDS OF REVIEW

#### A. Reconsideration

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995);

Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England

<u>Telephone and Telegraph Company</u>, D.P.U. 86-33-J at 2 (1989); <u>Boston Edison Company</u>, D.P.U. 1350-A at 5 (1983).

## B. Clarification

Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous as to leave doubt as to its meaning. <u>Boston Edison Company</u>, D.P.U. 92-1A-B at 4 (1993); <u>Whitinsville Water Company</u>, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. <u>Boston Edison Company</u>, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

#### C. Recalculation

The Department's Procedural Rule, 220 C.M.R. § 1.11(9), authorizes a party to file a motion for recalculation based on an alleged inadvertent error in a calculation contained in a final Department Order. The Department grants motions for recalculation in instances where an Order contains a computational error or if schedules in the Order are inconsistent with the findings and conclusions contained in the body of the Order. Western Massachusetts Electric Company, D.P.U. 89-255-A at 4 (1990); Essex County Gas Company, D.P.U. 87-59-A at 1-2 (1988).

## IV. RATE BASE

# A. System Renewal Investments

#### 1. Introduction

In its Order, the Department denied the Company's proposal to include in rate base \$28,056,000 in system renewal investments which the Company placed into service during

1996, after the end of the test year. Order at 16. Because the Department also rejected Boston Gas' proposed corresponding depreciation reserve adjustment of \$20,056,831, the net disallowance was \$7,999,169. <u>Id.</u> The Department found that the proposed additions did not constitute an extraordinary addition to year-end rate base on either an individual or collective basis. Order at 16. Boston Gas seeks reconsideration of the Department's decision to exclude these system renewal investments from rate base (Company Motion at 21).

## 2. Positions of the Parties

#### a. <u>The Company</u>

The Company claims that the system renewal investments are now in service, are necessary to maintain safe and reliable service, and that its forecast of the 1996 system renewal investment was accurate (Company Motion at 21). Boston Gas also asserts that exclusion of these investments will deny the Company the opportunity to earn a return on these investments or recover the cost of these investments through depreciation charges until the end of the PBR term sometime in late 2002, which Boston Gas purports will translate into a revenue loss of \$10.0 million over the term of the PBR (Company Motion at 21). The Company asks for reconsideration in light of the "changes in the regulatory landscape required by the shift to PBR" and urges the Department to reflect the 1996 system renewal investments both in rate base and depreciation expense (Company Motion at 21).

# b. <u>Attorney General</u>

The Attorney General opposes the Company's motion for reconsideration on this issue, contending that the Company's arguments were already considered and decided in the Order, and that Boston Gas's Motion is based on extra-record evidence (Attorney General

Response at 8). With respect to the Company's argument that the shift to PBR justifies a departure from traditional ratemaking standards, the Attorney General points out that the Department has clearly established that initial rates under a PBR mechanism will be established based on traditional cost of service principles (Attorney General Response at 7, <a href="mailto:citing\_electric\_Utility\_Restructuring">citing\_electric\_Utility\_Restructuring</a>, D.P.U. 96-100, May 1, 1996 Explanatory Statement at 73; <a href="mailto:also\_oiting\_electric\_Utility\_Restructuring">also\_oiting\_electric\_Utility\_Restructuring</a>, D.P.U. 96-100, May 1, 1996 Explanatory Statement at 73; <a href="mailto:also\_oiting\_electric\_Utility\_Restructuring">also\_oiting\_electric\_Utility\_Restructuring</a>, D.P.U. 94-158, at 58 (1995); <a href="mailto:NYNEX">NYNEX</a>, D.P.U. 94-50, at 291, 296 (1995)). The Attorney General points out that the Department had properly excluded the 1996 system improvement investments from rate base consistent with well-founded Department precedent (Attorney General Response at 7). The Attorney General concludes that the Company has failed to point out any unknown or undisclosed evidence demonstrating extraordinary circumstances justifying a fresh look at the record, and thus has failed to sustain its burden of proof (Attorney General Response at 7-8).

# 3. <u>Analysis and Findings</u>

In evaluating a utility's incentive ratemaking plan, the Department has found that it is important to determine just and reasonable rates to create a starting point for price cap regulation. Massachusetts Electric Company, D.P.U. 95-40-A at 21 (1995); NYNEX, D.P.U. 94-50, at 273 (1995). To establish these initial rates, the Department relies on traditional cost-of-service principles. Incentive Regulation, D.P.U. 94-158, at 58 (1995); NYNEX, D.P.U. 94-50, at 39 (1995).

While Boston Gas claims that the shift from traditional cost of service return regulation to PBR creates new obligations to include forecasted rate base additions, the Department found that there is no conceptual difference between the ratemaking treatment of post-test year plant additions under traditional cost of service regulation and that under a

PBR environment. Order at 15-16. Boston Gas has provided no persuasive evidence or argument to convince us otherwise. Accordingly, the Department finds that the ratemaking treatment of the Company's 1996 system improvement additions shall be determined based on existing Department precedent.

With respect to plant installed after the end of the test year, the Department's policy is not to adjust year-end rate base unless the utility demonstrates that the addition represents a significant investment which has a substantial impact on a company's rate base.

Massachusetts-American Water Company, D.P.U. 95-118, at 40-41 (1996); Western

Massachusetts Electric Company, D.P.U. 85-270, at 62-63, 140-141 (1986); Bay State Gas

Company, D.P.U. 1122, at 19 (1982). In the Order, the Department found that the proposed 1996 system improvement investments, both individually and collectively, did not rise to the level of being significant increases to year-end rate base. Order at 16.

The Company's argument that these systems have been completed is based on evidence that Boston Gas sought to include in the record after the Order was issued, and which the Department excluded from consideration. D.P.U. 96-50-B at 8-10. Even if the evidence had been admitted into the record, the information would not have a significant impact upon our decision to disallow the system improvements investments from rate base. While Boston Gas claims that the final cost of the 1996 system improvements demonstrated the reliability of its original estimates, the Company's estimate is irrelevant to the issue at

In D.P.U. 95-118, the Department found that Massachusetts-American Water Company's investment in its Accord Pond Pumping Station and off-site piping related to a water treatment plant, totalling approximately \$3.7 million, was significant and had a substantial impact on that company's year-end rate base of approximately \$11 million. D.P.U. 95-118, at 84. In contrast, the net system renewal investments sought by Boston Gas were only \$8.0 million, as compared to a year-end rate base of approximately \$450 million.

hand. The Department was fully aware that the 1996 additions essentially had been completed by the date of the Order. Order at 9 n.7. However, as noted above, the Department found that the proposed 1996 system improvement investments did not constitute a significant increase to year-end rate base. Order at 16. The Department finds that the Company is attempting to reargue issues already considered and decided in the Order.

The Company has not brought to light any previously unknown or undisclosed facts that would have a significant impact on the decision already rendered, as contemplated by the Department's standard. Further, the Company has not demonstrated that the Department's treatment of this issue was the result of mistake or inadvertence. Therefore, the Company has failed to meet the Department's standard for reconsideration. Accordingly, the Department denies the Company's motion for reconsideration of its adjustment for system improvement investments.

#### B. Information Technology Systems

#### 1. Introduction

In its Order, the Department denied the Company's proposal to include in rate base \$2,528,000, representing four performance measuring systems that were either actually placed into service or projected to be completed during 1996, after the end of the test year. Order at 16. The Department found that only one of the proposed additions, a financial applications system, had been placed into service as of the date of the Order, and excluded

The Order excluded a total of four information system investments with a proposed cost of \$2,808,000 from the Company's rate base. These consisted of a \$1,250,000 financial applications system installed in July of 1996, a proposed data warehousing package with an estimated cost of \$1,200,000, a proposed activity-based cost management system with an estimated cost of \$200,000, and a proposed budgeting system with an estimated cost of \$158,000. Order at 10, 16.

this from rate base because it did not constitute an extraordinary addition to year-end rate base. <u>Id.</u> The Department excluded the three remaining systems from rate base because they had not been completed and placed into service. <u>Id.</u> Boston Gas seeks reconsideration of the Department's decision to exclude from rate base \$1,582,000 of its information technology systems.<sup>10</sup>

## 2. Positions of the Parties

## a. <u>The Company</u>

The Company claims that two of the four information technology systems disallowed by the Department are now in service, and thus should be reflected in rates (Company Motion at 22). Boston Gas also claims that exclusion of these investments will deny the Company both the opportunity to earn a return on these investments and to recover the cost of these investments through depreciation charges until the end of the PBR term sometime in late 2002, which Boston Gas purports will translate into a revenue loss of \$2.0 million over the term of the PBR (id.). Claiming that denial of these investments in rate base is confiscatory, the Company urges the Department to reflect the 1996 information system investments in both rate base and amortization expense (id.).

#### b. Attorney General

The Attorney General opposes the Company's request for reconsideration on this issue. The Attorney General contends that the Company's arguments on this subject are essentially the same as those propounded on brief, and had been fully considered and decided

The Company's Motion referred to two unspecified information systems. Based on the plain meaning of the Company Motion, the Department concludes that Boston Gas is only seeking reconsideration of the treatment accorded to the financial applications system and budgeting system.

by the Department based on well-founded precedent (Attorney General Response at 9-10). The Attorney General argues that the Company is merely rearguing the issue, and has failed to point out any unknown or undisclosed record evidence demonstrating extraordinary circumstances justifying a fresh look at the record (id. at 10). Therefore, the Attorney General concludes that the Company Motion on this issue should be denied (id.).

## 3. Analysis and Findings

With respect to plant installed after the end of the test year, it is the Department's policy not to adjust year-end rate base unless the utility demonstrates that the addition represents a significant investment which has a substantial impact on a company's rate base.

Massachusetts-American Water Company, D.P.U. 95-118, at 40-41 (1996); Western

Massachusetts Electric Company, D.P.U. 85-270, at 62-63, 140-141 (1986); Bay State Gas

Company, D.P.U. 1122, at 19 (1982). The Department found that the proposed information system investments, both on an individual basis and collectively, did not rise to the level of being significant increases to year-end rate base. Order at 16.

The Company's argument that these systems have been completed is based on evidence that Boston Gas sought to include in the record after the Order was issued, and which the Department excluded from consideration. D.P.U. 96-50-B at 8-10. Even if the evidence had been admitted into the record, the information would not have a significant impact upon our decision to disallow the information systems from rate base. The Department found that the information system investments did not constitute a significant increase to year-end rate base. Order at 16. The Department finds that the Company is attempting to reargue issues already considered and decided in the Order.

The Company has not brought to light any previously unknown or undisclosed facts that would have a significant impact on the decision already rendered, as contemplated by the Department's standard. Further, the Company has not demonstrated that the Department's treatment of this issue was the result of mistake or inadvertence. Therefore, the Company has failed to meet the Department's standard for reconsideration. Accordingly, the Department denies the Company's motion for reconsideration of its adjustment for information technology system investments.

## V. EXPENSES

# A. <u>Union Wage Increase</u>

#### 1. Introduction

In its Order, the Department found that the first adjustment under the Company's price cap mechanism would take effect on November 1, 1997, instead of December 1, 1996 as proposed by Boston Gas. Order at 320. Therefore, because the approved effective date of the first annual adjustment would not capture the 1997 wage increase for union personnel, the Department increased cost of service by \$1,162,366 to reflect union wage increases through May 1997, or half of the rate year. <u>Id.</u> at 48. Boston Gas requests that the Department reconsider its decision to exclude union wage increases reflecting the period from May 1, 1997 through December 1, 1997 (Company Motion at 22-23).

# 2. Positions of the Parties

#### a. The Company

According to the Company, Department precedent states that a utility's cost of service should include a prospective union wage increase in its entirety if it is reasonable and scheduled to occur prior to the mid-point of the rate year (id. at 22-23, citing Western

Massachusetts Electric Company, D.P.U. 86-280-A at 74 (1987); Commonwealth Gas

Company, D.P.U. 87-122, at 54-55 (1982)). Therefore, Boston Gas asserts that it is entitled to the full annualized level of 1997 union wage increases, consistent with the treatment of union wage increases in prior Department decisions (id. at 23, citing Boston Gas Company, D.P.U. 93-60 (1993); Boston Gas Company, D.P.U. 88-67, Phase I (1988)).

#### b. Attorney General

The Attorney General points out that the amount granted to the Company by the Department was similar to what the Company requested in its original filing (Attorney General Response at 13). The Attorney General states that, based on the Company's proposal to implement the first PBR adjustment on December 1, 1996, its "cast off" rates would have increased by 2.45 percent, or about 0.4 percent more than what the Department allowed in the Order (id.). Therefore, the Attorney General urges the Department to deny reconsideration of the 1997 union wage expense (id. at 14).

## 3. Analysis and Findings

Department precedent holds that the full amount of any union wage increases that take place during a rate year will be reflected in rates, provided that the increases are not too remote and are found to be reasonable. Massachusetts Electric Company, D.P.U. 95-40, at 20 (1995); Boston Gas Company, D.P.U. 93-60, at 93 (1993). In its Order, the Department found that the union wage increase in this case meets this standard. Order at 48. However, the Department inadvertently failed to include the full year union wage increase in rates. Therefore, the Department grants the Company's request for reconsideration of its union wage increase. Accordingly, the Company shall increase its cost of service by

\$911,069.11

## B. 1997 Nonunion Salary Increase

## 1. Introduction

Although, in its Order, the Department delayed the implementation of the first PBR increase from December 1, 1996 to November 1, 1997, the Department made no further adjustment to the cost of service to adjust for nonunion salary increases beyond 1996, because no commitment to an increase was provided by the Company. Order at 49. Boston Gas requests that the Department reconsider its decision to deny a nonunion salary increase beyond 1996 (Company Motion at 23-24).

## 2. Positions of the Parties

## a. <u>The Company</u>

The Company contends that the change in the "implementation date" of the PBR from December 1, 1996 to November 1, 1997 warrants inclusion in cost of service of nonunion salary increases scheduled to take place in 1997 (id.). Boston Gas attempted to submit new evidence to demonstrate its commitment to a compensation pool of \$1,200,000 for nonunion employees for 1997 (Company Motion at 24). The Company claims that it did not provide this information during the evidentiary hearings because under its PBR proposal, nonunion salary increases during 1997 would have been covered by the proposed December 1, 1996 increase (Tr. 25 at 31-32). Boston Gas asserts that because it had no notice that the Department would determine that the first annual adjustment under PBR would be made in 1997, the Company had no way of knowing that the 1997 nonunion increases would be

 $<sup>(\$60,278,480 - \$2,390,752) \</sup>times 4.5\% = \$2,604,948 \times 4.25\% = (\$2,427,911 \times 85.4\%) - \$1,162,367 = \$911,068$ . D.P.U. 96-50, at 48; Exh. BGC-39, at 15.

necessary (Tr. 25 at 33). The Company argues that its proposed increase is consistent with Department precedent (Company Motion at 24, <u>citing Fitchburg Gas and Electric Light</u> Company, D.P.U. 1270/1414, at 14 (1983)).

### b. Attorney General

The Attorney General submits that the Company's Motion fails to satisfy the Department's standards for reconsideration and fails to recognize that the Department's Order was based on well established precedent and policy (Attorney General Response at 14).

According to the Attorney General, the Company's extra-record material is presented for the first time on reconsideration, which is not acceptable under Department precedent (id. at 14-15, citing Berkshire Gas Company, D.P.U. 92-210-C at 10-11 (1993); Western

Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987); Western Massachusetts

Electric Company, D.P.U. 85-270-C at 18-20 (1987)). Moreover, the Attorney General contends that the compensation pool fails to meet the "expressed intent" standard (id. at 15).

Regarding the Company's arguments that it lacked notice, the Attorney General argues that the Department's policies on post-test year payroll increases are clear, and that Boston Gas should not have "assume[d] onto itself the authority to waive these policies." (Attorney General Comments at 2-3). Moreover, the Attorney General maintains that the testimony in the proceeding placed the Company on notice that the proposed date of the first annual adjustment under PBR and its conflict with traditional cost of service was an issue in this case (id. at 3, citing Exh. DOER-70, at 29; RR-AG-5; Tr. 2, at 59-60).

## 3. Analysis and Findings

During the course of the hearings in D.P.U. 96-50, the Department requested that Boston Gas identify, <u>inter alia</u>, its 1997 wage and salary increases that would need to be

reflected in cost of service if the Department were to implement a date different from that proposed by the Company for the first annual increase under PBR (RR-AG-2; Tr. 2, at 59-60). In its response, Boston Gas provided evidence of union increases, but failed to identify any 1997 nonunion increases that should be included in the cost of service (see RR-AG-5).

With respect to the Company's argument relating to notice, the Department has determined that the obligation to provide notice has been fulfilled when a witness has been questioned, or responses to information requests have been marked as evidence on a particular topic. Bay State Gas Company, D.P.U. 92-111-A at 10 (1993); Berkshire Gas Company, D.P.U. 92-210-C at 8 (1992); NYNEX, D.P.U. 86-33-D at 9 (1987). The Department finds that, contrary to the Company's assertion, Boston Gas was on notice that the effective date of its first increase under its PBR proposal was at issue in this proceeding.

Moreover, Boston Gas's argument that it has committed to a nonunion compensation pool for 1997 is based on evidence that the Company sought to include in the record after the Order was issued, and that the Department excluded from consideration. Boston Gas Company, D.P.U. 96-50-B at 8-10 (1997). The Department finds that the Company has presented no evidence that the creation of its nonunion compensation pool after the close of the record, and apparently after the date of the Order, is an extraordinary or compelling circumstance which warrants a departure from well-established Department policy.

The Company has not brought to light any previously unknown or undisclosed facts that would have a significant impact on the decision already rendered, as contemplated by the Department's standard. Further, the Company has not demonstrated that the Department's treatment of this issue was the result of mistake or inadvertence. Therefore, the Department

finds that the Company has failed to meet the Department's standard for reconsideration.

Accordingly, the Department denies the Company's request for reconsideration on the issue of 1997 nonunion wage increases.

### C. FICA

### 1. Introduction

In its Order, the Department reduced the Company's proposed FICA taxes by \$53,514. Order at 393. The Company requested recalculation of its FICA expense (Company Motion at 24).

### 2. Positions of the Parties

## a. The Company

Boston Gas asserts that FICA taxes should be increased to reflect (1) what the Company states are taxes associated with the portion of the 1997 union wage increase granted by the Department, but which were not reflected in the payroll tax schedule contained in the Order, (2) the remaining portion of 1997 union wage increase requested by in the Company Motion, and (3) the non-union salary increase requested in the Company Motion (id. at 24).

#### b. Attorney General

The Attorney General states that he has no objection to the Company's request to adjust FICA taxes associated with the portion of the 1997 union wage increase granted by the Department in its Order (Attorney General Response at 36).

# 3. Analysis and Findings

The Company is correct that FICA should be increased consistent with the level of salary and wage increase granted. The Department inadvertently omitted from cost of

service those FICA taxes associated with the 4.5 percent union wage increase which was included based upon the later implementation date for the first adjustment under PBR. In addition, based on our findings in Section V.A.3, above, the Department has increased the cost of service by a total of \$911,069 to reflect the full 1997 union wage increases.

Therefore, the Department finds that a concordant adjustment to FICA taxes is necessary.

As noted above, the Department has denied the Company's motion for reconsideration on nonunion payroll expense. Since there is no record evidence of the separate payroll taxes associated with union and nonunion employees, the Department has estimated the appropriate payroll tax adjustment to be \$146,117 for presentation purposes.<sup>12</sup> The Company is hereby directed to recalculate its payroll tax expense consistent with the findings contained in this Order, and submit the appropriate payroll tax level, together with all supporting workpapers and calculations, as part of its compliance filing.

#### D. Overtime Adjustment

### 1. Introduction

In its Order, the Department rejected the Company's proposed overtime adjustment because it was impossible to determine how much of the decrease in overtime hours was a continuation of the downward trend, how much was due to the QUEST program, and how much was due to the warmer weather during the 1994/1995 heating season. Order at 45. As a result, the Department reduced the Company's cost of service by \$2,516,842. <u>Id.</u> Boston Gas seeks reconsideration of the Department's disposition of the Company's proposed overtime adjustment (Company Motion at 24-25).

 $<sup>(\$1,162,366 \</sup>times .0765) + (\$911,069 \times .0765 \times .854).$ 

### 2. Positions of the Parties

### a. The Company

Boston Gas asserts that new evidence of overtime expenses supports its claim put forth during the proceeding that its 1995 overtime expenses are non-representative (id. at 25).

#### b. Attorney General

The Attorney General maintains that Boston Gas fails to satisfy the Department's standard for reconsideration since the Company is basing its request for reconsideration on updated information that is being presented for the first time on reconsideration (Attorney General Response at 10-11). Further, the Attorney General asserts that the Company is simply attempting to reargue an issue that has already been considered and decided (id. at 11).

### 3. Analysis and Findings

The Company's argument that its 1995 overtime expenses were non-representative is based solely on evidence that the Department excluded from consideration. D.P.U. 96-50-B at 8-10. Even if the evidence had been admitted into the record, the information would not have a significant impact upon our decision to disallow the Company's proposed adjustment. The Department finds that a reported increase in overtime expense for 1996 does not provide a foundation on which to conclude that Boston Gas's 1995 overtime expense is a non-representative level, particularly in light of the record evidence pointing to a decline in historic overtime expense. The Department further finds that the Company is attempting to reargue issues already considered and decided in the Order.

Therefore, the Company has not brought to light any previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered, as contemplated by the Department's standard. Further, the Company has not demonstrated that the Department's treatment of this issue was the result of mistake or inadvertence.

Accordingly, the Company has failed to meet the Department's standard for reconsideration.

### E. QUEST-Related Payroll Taxes

#### 1. Introduction

In its Order, the Department increased the savings associated with QUEST by \$597,397 in salaries for twelve positions not yet refilled, \$137,400 in related benefits, and \$61,314 in related payroll taxes. Order at 61. The Company is seeking recalculation of the employee-related payroll taxes portion of this adjustment (Company Motion at 25-26).

### 2. Positions of the Parties

#### a. The Company

According to the Company, a portion of its payroll taxes is capitalized, with the remaining balance charged to expense (<u>id.</u>). Boston Gas contends that, in making the QUEST-related payroll adjustments, the Department inadvertently excluded from cost of service the full payroll tax expense associated with the twelve unfilled positions, thereby overstating the payroll tax adjustment by \$8,952 (id. at 26).

### b. Attorney General

The Attorney General states that he has no objection to this recalculation (Attorney General Response at 36).

## 3. Analysis and Findings

The Company is correct that while a portion of its payroll taxes is capitalized, the Department inadvertently excluded the full amount of payroll taxes from cost of service. Therefore, the Department grants the Company's request for recalculation on this expense. Accordingly, the Company's cost of service shall be increased by \$8,952.

## F. Bad Debt Expense

### 1. <u>Introduction</u>

In its Order, the Department rejected the Company's proposed lagging methodology, by which yearly bad debt writeoffs are lagged one year behind its associated revenues, to determine the uncollectible ratio. Order at 65, 71. In addition, the Department recognized that the migration of customers to transportation service would likely cause gas revenues, and therefore bad debt expense, to decrease, thus requiring a new method of allocating bad debt expense. Id. at 72. Therefore, the Department required the Company to allocate collection of its bad debt expense between base rates and the cost of gas adjustment clause ("CGAC"), based on the test year normalized non-gas revenues compared with gas revenues. Id. Boston Gas is seeking recalculation and reconsideration of the Department's decision.

### 2. Positions of the Parties

## a. The Company

The Company argues that the Department committed two errors in its Order on bad debt expense. First, the Company states that the Department was incorrect in calculating the revenue requirement component of the bad debt expense formula (Company Motion at 26). The Company argues that, although the Department excluded from base rates \$8,017,131 in bad debts and \$1,174,030 in local production and storage ("P&S") expenses that were

transferred to the CGAC, these expenses were not added back to the total (gas and nongas) revenue requirement used to determine bad debt expense (id.). Boston Gas maintains that because CGAC revenues are a component of the overall revenue requirement used in the Department's bad debt calculation, their exclusion here understates the Company's bad debt expense by \$197,610 (id.).

Second, Boston Gas seeks reconsideration of the Department's decision to reject the lagged method by which the Company calculated its uncollectible ratio. The Company claims that this is inconsistent with <u>Boston Gas Company</u>, D.P.U. 93-60 (1993), where the Department approved the Company's calculations which included the lagged method (<u>id.</u>). Boston Gas contends that because the lagged methodology was allowed in its last rate case, the Company is entitled to consistent treatment in this case, and at a minimum is entitled to prior notice of any change in methodology (<u>id.</u>, <u>citing Boston Gas Company v. Department of Public Utilities</u>, 367 Mass. 92, 104 (1975); <u>New England Telephone and Telegraph</u> Company v. Department of Public Utilities, 371 Mass. 67, 81 (1976)).

#### b. Attorney General

The Attorney General states that, to the extent the Order may be ambiguous on the total amount of bad debt expense to be allowed in the CGAC, he does not object to clarification on that issue (Attorney General Response at 36).

Regarding the Department's rejection of the lagged method to calculate the uncollectible ratio, the Attorney General opposes the Company's request for reconsideration

The Department's policy on bad debt expense is to apply an uncollectibles ratio to the total revenue requirement (gas- and nongas-related) as determined for the particular utility. This calculation requires an iterative process. <u>Berkshire Gas Company</u>, D.P.U. 90-121, at 96-97 (1990); <u>Hingham Water Company</u>, D.P.U. 88-170, at 27-29 (1989).

on this issue (id. at 17). The Attorney General argues that contrary to the Department's standard for reconsideration, the Company is trying to reargue an issue raised and considered in the main case, and to update the record for the first time on reconsideration (id. at 18). Furthermore, the Attorney General states that it is within the Department's ratemaking authority to require a company to demonstrate that its method is more representative than the traditional approach, and that the Department sufficiently explained why the Company failed to justify such a change (id. at 18-20). According to the Attorney General, the Company's claim that it had no notice or fair warning of this issue lacks credibility because (1) all aspects of a general rate case filing are at issue, (2) interrogatories were issued and cross-examination conducted on this issue, and (3) the Company argued the issue in its initial and reply briefs (id. at 19).

## 3. Analysis and Findings

# a. <u>Use of Lagging Methodology</u>

With regard to Boston Gas's argument concerning the existence of a lag between revenues and writeoffs, the Company's argument is based on evidence that Boston Gas sought to include in the record after the Order was issued, and which the Department excluded from consideration. D.P.U. 96-50-B at 8-10. Even if the evidence had been admitted into the record, the information would not have a significant impact upon our decision to disallow the Company's use of a lagged period. Moreover, the information which Boston Gas sought to be admitted into the record is at odds with other record evidence in this case concerning writeoffs (Exh. AG-161; Tr. 15, at 30). The Department finds that the Company is attempting to reargue issues already considered and decided in the Order.

Turning to the Company's "reasoned consistency" argument, the cases relied upon by Boston Gas are inapposite. In this case, the Department explained why it did not accept the use of a lagged period between revenues and writeoffs, noting that the evidence did not support the Company's proposed lagging methodology. D.P.U. 96-50, at 71. Moreover, in the Department's Order in D.P.U. 93-60 there was no discussion of a lagged period, and the only arguments in that case involved the use of forecasted gas costs. D.P.U. 93-60, at 151-152. The Department's acceptance sub silentio of a bad debt calculation in one prior rate case does not constitute a pattern of conduct. See Robinson v. Department of Public Utilities, 416 Mass. 668, 673 (1993) (allowing petitioner to intervene in one earlier proceeding did not establish a "pattern" of conduct); NYNEX, D.P.U. 94-50, at 444 (1995) (the non-litigation of long term debt calculations in a previous rate proceeding did not preclude a different outcome in a subsequent case). Moreover, Boston Gas cannot fairly claim that it had no notice that its lagged methodology was an issue in this case because it was the subject of discovery, cross-examination, and briefing. See, e.g., Exh. AG-161; Tr. 15, at 30; Attorney General Brief at 68-69; Attorney General Reply Brief at 39-40; Company Brief at 113-114; Company Reply Brief at 42. Bay State Gas Company, D.P.U. 92-111, at 5-6 (1992).

The Company has not brought to light any previously unknown or undisclosed facts that would have a significant impact on the decision already rendered, as contemplated by the Department's standard. Further, the Company has not demonstrated that the Department's treatment of this issue was the result of mistake or inadvertence. Therefore, the Company has failed to meet the Department's standard for reconsideration. Accordingly, the Department denies the Company's motion for reconsideration on this issue.

## b. Base Rate Inclusion of Bad Debt and Local P&S Expense

The Company is correct that the bad debt calculation should be based on the total revenue requirement found appropriate by the Department. With regard to the local P&S expense, the Department notes that the \$1.7 million in local P&S expense allocated to the CGAC was already included in the Company's test year firm revenues, which was used as the basis for computing the Company's bad debt allowance. Accordingly, the Department denies the Company's motion for reconsideration on this component.

With regard to the roll-in of bad debt to the CGAC, the Department inadvertently omitted from cost of service the CGAC-related portions of bad debt when determining the Company's total revenue requirement used to develop the bad debt allowance for ratemaking purposes. Therefore, the Department grants recalculation of this issue. Moreover, the adjustments granted herein to the revenue requirement as determined by the Order will require a revised bad debt expense component. Accordingly, the Department shall recalculate Boston Gas' bad debt in a manner consistent with the findings herein.

Using the uncollectible ratio of 2.15 percent found appropriate in the Order, and the revised normalized firm revenue requirement of \$612,370,740, the Department finds that the uncollectible expense level is \$13,165,971. In its Order, the Department found that 38 percent of Boston Gas' bad debt expense should be recovered through base rates, with the remaining portion to be collected through the CGAC. Order at 72. As customers migrate from sales service to transportation service, the Company's own gas expenses will decrease (and could reach zero if all customers converted to transportation service). <u>Id.</u> Thus, the overall proportion of bad debt attributable to base rates will increase as customers migrate to transportation service. Since the Department has found a bad debt expense level of

\$13,165,971, the Company's base rates shall incorporate \$5,003,069. The allocation to base rates will remain fixed for the period of the price cap plan. The Company shall reconcile on a semi-annual basis the level of bad debt expense collected in the CGAC, currently set by this Order at \$8,162,902, based on the actual uncollectible expense attributable to gas costs as specified in the Order. The Department further directs the Company to file all future CGAC compliance filings consistent with the allocation specified above.

## G. <u>Cellular Telephones</u>

#### 1. Introduction

In its Order, the Department rejected the Company's proposed adjustment for cellular telephone expense. Order at 76. Because Boston Gas provided average monthly charges for its cellular phones instead of charges associated with actual use, the Department found that the charges submitted by the Company may not be representative of actual usage for a full year. <u>Id</u>. Therefore, the Department determined that the proposed adjustment was not known and measurable. <u>Id</u>. The Company requests reconsideration of its proposed adjustment of \$498,395 for cellular telephone expense.

## 2. Positions of the Parties

#### a. The Company

According to the Company, new evidence confirms that (1) cellular telephone use has increased, (2) the expense adjustment made by the Company in its initial submission was accurate, and (3) the adjustment proposed by the Company was known and measurable (Company Motion at 27). According to the Company, because the Company's cellular telephone expenses have increased substantially, and the new evidence satisfies the requirement that these expenses be known and measurable, the Department should allow the

adjusted expenses to be included in its cost of service (id.).

### b. Attorney General

The Attorney General urges the Department to deny the Company's request for reconsideration of its cellular telephone expense (Attorney General Response at 21). The Attorney General states that Boston Gas's extra-record material is presented for the first time on reconsideration, which is prohibited under Department precedent (id.). According to the Attorney General, the Company's submission of extra-record material is fundamentally unfair and inconsistent with Department practice (id.).

## 3. <u>Analysis and Findings</u>

The Company's argument that its cellular telephone expense is known and measurable is based solely on evidence that the Department excluded from consideration.

D.P.U. 96-50-B at 8-10. The Department notes that most of the detailed information Boston Gas sought to enter into the record after the issuance of the Order would have been in the possession of the Company before the record was closed, and could have been proffered as evidence at that time. The Department found no extraordinary or compelling circumstances that would warrant either reopening the record or otherwise considering the new exhibits and testimony at issue. Accordingly, the Department excluded the proposed evidence as an impermissible and untimely update. D.P.U. 96-50-B at 9. See Milford Water Company, D.P.U. 92-101, at 36-37 (1992). The Department finds that the Company is attempting to reargue issues already considered and decided in the Order.

Further, the Company has not demonstrated that the Department's treatment of this issue was the result of mistake or inadvertence. Therefore, the Company has failed to meet the Department's standard for reconsideration. Accordingly, the Department denies the

Company's request for reconsideration of its adjustment for cellular telephone expense.

## H. Rate Case Expense

### 1. Introduction

In its Order, the Department approved an adjustment for rate case expense in the amount of \$102,254. Order at 79. Schedule 2 of the Order, however, designates the adjustment as \$100,443. <u>Id.</u> at 388. Boston Gas seeks recalculation of the rate case expense adjustment contained in Schedule 2.

### 2. Positions of the Parties

### a. <u>The Company</u>

The Company maintains that the rate case adjustment of \$100,443 listed in Schedule 2 of the Order is incorrect, and should be adjusted to reflect the correct amount of \$102,254 contained in the body of the Order (Company Motion at 28).

#### b. Attorney General

The Attorney General states that, based on the Department's apparent inadvertence, he does not oppose the Company's request for recalculation (Attorney General Response at 37).

### 3. Analysis and Findings

The Department agrees with the Company and the Attorney General that Schedule 2 of the Order is inconsistent with the Department's findings. Therefore, the Department grants the Company's request for recalculation. Accordingly, Schedule 2 of the Order shall be amended to reflect rate case expense adjustment of \$102,254, thereby increasing the Company's cost of service by \$1,811.

### I. QUEST Expenses

#### 1. Introduction

In its Order, the Department allowed the Company to recover its expenses related to QUEST. Order at 55. The Department also found that a five-year amortization period for the recovery of these expenses was appropriate. Order at 55. Applying a five-year amortization period resulted in a reduction of \$2,307,852 to the Company's cost of service. Id. at 56. The Company seeks reconsideration of its proposal to amortize the recovery of QUEST-related expenses over a two-year period (Company Motion at 28).

### 2. Positions of the Parties

### a. The Company

The Company argues that the Department, in establishing a five-year amortization period for QUEST expenses, overlooked the Company's assertion that it will be undertaking future reengineering efforts (id.). The Company states that the Department did not apply the same amortization period as it approved in <a href="NYNEX">NYNEX</a>, and argues that the Department committed legal error since this finding does not represent "reasoned consistency" (id. at 28-29).

#### b. Attorney General

The Attorney General states that the Department did not overlook the Company's assertion about future reengineering efforts, but rather considered the Company's position and rejected it (Attorney General Response at 22). In addition, the Attorney General argues that the Department provided sufficient reasons for a finding that a five-year amortization period is appropriate, including a discussion of the rationale for a two-year amortization period in NYNEX (id. at 22-23).

### 3. Analysis and Findings

In its Order, the Department explicitly stated that it chose an amortization period that was different from that in <a href="NYNEX">NYNEX</a> because of the difference in the rate of technological change between the natural gas and telecommunications industries. Order at 55-56. The Department also stated that since the benefits of QUEST would be annually recurring, which results in the Company receiving benefits from QUEST well beyond the Company's proposed two-year amortization period, the Company should implement an amortization period that would be more in line with the lifetime of the potential savings.

Order at 56.

The concept of reasoned consistency has been violated when the Department engages in a decision that is an "unexplained deviation" from its prior pattern. Boston Gas Company v. Department of Public Utilities, 367 Mass. 92, 92-105 (1975). Further, the Court previously has found that Department findings in one prior proceeding does not constitute a pattern from which the Department cannot deviate. Robinson v. Department of Public Utilities, 624 N.E. 2nd 951, 416 Mass. 668 (1993). As a result, the Department's reliance on a two-year amortization period in NYNEX does not bind the Department to this amortization period in other proceedings. Accordingly, the Department did not violate the concept of "reasoned consistency" in determining the amortization period for QUEST expenses.

The Company has not brought to light any previously unknown or undisclosed facts that would have a significant impact on the decision already rendered, as contemplated by the Department's standard. Further, the Company has not demonstrated that the Department's treatment of this issue was the result of mistake or inadvertence. Therefore, the Department

finds that the Company has failed to meet the Department's standard for reconsideration.

Accordingly, the Department denies the Company's request for reconsideration of the

Department's decision regarding amortization of the Company's QUEST expenses.

## J. Pension Expense

#### 1. Introduction

In its Order, the Department found that basing pension expense on tax deductible contributions provides a reasonable basis for the determination of pension expense for ratemaking purposes. Order at 81. The Department also found that the contribution for 1995, \$6,650,000, resulted primarily from a revision to the current liability interest rate and is considerably higher than contributions have been in recent years. Id. The Department based a representative level of pension expense on a five year average, four years of cash contributions for tax years 1992 through 1995 inclusive and the projected contributions for 1996. Id. The Department also found that the Company had recorded settlement gains on annuity purchases in 1995 and 1993 and netted the five-year average of the settlement gains against the allowed pension expense. Id. These adjustments resulted in a net decrease of \$878,053 to test year pension expense. Id. at 82. The Company requests that the Department reconsider its use of the 1996 projected contribution level and instead use the five-year historical period of 1991 through 1995 (Company Motion at 29).

## 2. Positions of the Parties

### a. The Company

The Company contends that the Department has employed a selective use of precedent in basing the five-year average for pension expense on four years of actual contributions and projected contributions for 1996 (Company Motion at 29). The Company maintains that this

contrasts sharply with the Department's refusal to utilize projected information for other adjustments (<u>id.</u>). The Company contends that the Department is also aware that the Company's projected contributions for 1996 are subject to revision and can be made before September 15, 1997 (<u>id.</u>). Therefore, the Company asserts, if the Department follows precedent, 1996 pension expenses are not known and measurable (<u>id.</u>). Accordingly, the Company argues that the Department should employ the same method used, and allowed by the Department, to compute the Company's public liability expense and rely on known and measurable payments made between 1991 and 1995 (<u>id.</u>).

Further, the Company asserts, because the Department based its pension expense on the level of cash contributions, it should not have netted this amount against the average annuity gains (<u>id.</u> at 30). Boston Gas maintains that these gains only have the impact of reducing pension expense as shown on Exhibits AG-99 and DPU-200 (id.).

### b. Attorney General

The Attorney General maintains that the Company's Motion fails to meet the standard because there are no extraordinary circumstance requiring a fresh look at the record (Attorney General Response at 25, citing Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991)). The Attorney General also contends that, this fact notwithstanding, the Company's argument still fails (Attorney General Response at 25).

The Attorney General contests the Company's argument that the 1996 contribution is not known and measurable because Boston Gas could make additional contributions over the 1996 Maximum Tax Deductible amount determined by the actuaries (id. at 25, citing Company Motion at 29). The Attorney General maintains that the Company did not provide proof or even suggest that it would make any other contributions for 1996 (id. at 25).

The Attorney General asserts that the only evidence that the Company offers to support its argument is that in one year the actual contribution was higher than the (original) actuarially determined Maximum Tax Deducible Contribution amount (id.). The Attorney General notes that the Department recognized that this change was the result of an unusual after-the-fact change in the interest rate assumption used in the determination of the Tax Deductible Contribution amount (id. at 25-26). Therefore, the Attorney General argues, the Company's one example of the contribution being higher than the (original) actuarially determined amount is simply an exception and that the (original) actuarially determined Maximum Tax Deductible Contribution amount is in line with the amount that the Company typically contributes (id. at 26). The Attorney General also claims that the Company's pension expense has been overstated by the inclusion of early retirement costs included in the QUEST program costs that are being amortized over five years (id.).

The Attorney General argues that, for all the reasons stated above, the Department should deny reconsideration of the pension expense adjustment because the Company's argument does not provide any new evidence or arguments that are extraordinary in nature that should require a fresh look at the record (id. at 26, citing Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991)).

# 3. <u>Analysis and Findings</u>

As noted, the Department based a representative level of pension expense on a five-year average: four years of cash contributions for tax years 1992 through 1995 inclusive and the projected contributions for 1996. The Department finds that, in determining the appropriate level of pension expense to be included in rates, it inadvertently failed to consider fully the volatility of the Company's pension plan contributions. In order to address

this volatility, the Department finds that in this case the average of the historical five-year pension contributions results in a more appropriate level of pension expense. Therefore, the Department grants the Company's request for reconsideration of its pension expense.

Accordingly, the Department finds the Company's cost of service shall be increased by \$563.530.14

Contrary to the Company's contention that the Department has "employed a selective use of projected data" with regard to pension expense, the Department has routinely relied on actuarial studies to project appropriate levels of pension expense. Boston Gas Company, D.P.U. 93-60, at 233-235 (1993); Massachusetts Electric Company, D.P.U. 89-194/195, at 28 (1990). With respect to the Company's claim that the Department incorrectly netted the average annuity gains against the average level of cash contributions, the Company itself treated gains on annuity purchases as a separate adjustment in the calculation of its net pension expense (Exh. DPU-200). Accordingly, the Department finds that it correctly netted the annuity gains against the average level of cash contributions, and rejects recalculation or reconsideration of the treatment of annuity gains.

### K. Post-Retirement Benefits Other Than Pensions

#### 1. Introduction

During the test year, the Company was in the third year of a four year phase-in of post-retirement benefits other than pension ("PBOP") expense ordered in D.P.U. 93-60, at 212-215. Order at 82. The Company included \$6,605,026 for PBOP expense in the test year cost of service. Id. This amount incorporates two years and two months of the

phase-in through December 31, 1995. 15 Id.

In its Order, the Department based PBOP expense on the five-year average of the total funding amounts shown on Exhibit DPU-217, at 3, for the years 1997 through 2001 inclusive. <u>Id.</u> at 85-86. The Department included a total of \$6,774,709 for PBOP expense in rates which resulted in an increase of \$169,683 to the filed cost of service. <u>Id.</u> at 86. The Department eliminated the remainder of the FAS 106 phase-in adjustments totaling \$2,569,231 as shown, for example, on Exhibits BGC-6, at 1 and BGC-109. <u>Id.</u> The Company seeks reconsideration of this treatment, claiming that the Department erred in not implementing the third and fourth steps of the phase-in contained in D.P.U. 93-60 without putting the Company on notice that such treatment was being considered (Company Motion at 30).

### 2. Positions of the Parties

## a. <u>The Company</u>

The Company argues that the Department made a legal error in rejecting the third and fourth steps of the four step phase-in of PBOP expense (Company Motion at 30). The Company maintains that it is entitled to rely on that prior authorization, and that the doctrine of "consistent treatment" means that those two steps of the phase-in cannot be disallowed in this case without prior notice (id., citing Boston Consol. Gas Co. v. Department of Public Utilities, 321 Mass. 259, 265 (1947)). The Company also notes that the treatment allowed in

Rates in effect at that time included the full amount of the third step of the phase-in, but the full amount was not reflected in the cost of service as presented. The Company included the remaining ten months of the third step and the fourth step in the development of the price cap revenues (Exh. BGC-6) and in the reconciliation of the total revenue requirement to core rate revenue requirement (Exh. BGC-109). Order at 82.

D.P.U. 93-60 is consistent with the ratemaking treatment for PBOPs allowed all other utilities in the Commonwealth (Company Motion at 30).

### b. Attorney General

The Attorney General maintains that the Company fails to meet the standard for reconsideration, since there is no extraordinary circumstance requiring a fresh look at the record (Attorney General Response at 24, citing Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991)). The Attorney General states that the "doctrine of consistent treatment" is the only theory that the Company can argue on, since it cannot argue facts (id. at 24).

The Attorney General contends that funding requirements for PBOPs are decreasing over time, well below the pro forma level proposed by the Company (id., citing Order at 86 n 48. The Attorney General also asserts that neither the Company's pro forma expense nor the Department's expense level reflects the fact that these expenditures will decrease even further as a result of the loss of employees associated with QUEST (id. at 24). The Attorney General claims that although the Department's adjustment may not be consistent with the findings in D.P.U. 93-60, it certainly is consistent with the cost-of-service rate making which requires that the rates be set based on the decreasing expenditures expected to be incurred by the utility (id.).

The Attorney General also notes that the Company's initial pro forma cost of service includes another increase to the test year level of PBOP expense since that test year level is included in the operations and maintenance expense subject to the inflation adjustment (id. at 23 n.13, citing Exh. BGC-39, at 37).

The Attorney General argues that the Department should deny the Company's request to reconsider the PBOP expense adjustment, since there are no extraordinary circumstances

requiring a fresh look at the record and because Boston Gas ignores the fact that funding requirements for PBOPs are expected to decrease over time (<u>id.</u> at 24).

### 3. Analysis and Findings

Based on the following reasons, the Department rejects the Company's argument that the Department erred in rejecting the third and fourth steps of the PBOP phase-in approved in D.P.U. 93-60. The Department has found that the filing of a general rate case places a company on notice that every element of the rate request is at issue. Bay State Gas

Company, D.P.U. 1535-A at 17 (1983). In addition, the Department has long recognized the uncertainty inherent in FAS 106 estimates, and has noted that phase-ins of PBOP expenses give both utilities and the Department the flexibility to revisit the FAS 106 issue as additional information which may resolve the uncertainties and concerns becomes available.

Boston Gas Company, D.P.U. 96-50, at 214 (1996); Bay State Gas Company,

D.P.U. 92-111, at 225-226 (1992). Accordingly, the Department finds that it did not commit a legal error in its determination of the Company's PBOP expense.

Further, the Company has not brought to light any previously unknown or undisclosed facts that would have a significant impact on the decision already rendered, as contemplated by the Department's standard. Therefore, the Company has failed to meet the Department's standard for reconsideration. Accordingly, the Department denies the Company's motion for reconsideration of its adjustment for PBOP expense.

At the time the Order was issued, the Company had been in the third step of the phase-in for one year and one month, and could have implemented the last step of the phase-in approximately one month prior to the date of the Order.

## L. <u>Property Taxes</u>

### 1. Introduction

In its Order, the Department rejected the Company's proposal to use its property valuation reports provided to municipalities pursuant to G.L. c. 59, § 29 as a basis for determining the Company's property tax expense. To Order at 109-110. The Department found that the Company's proposed method was speculative, and instead based property tax expense on the most recent property tax bills received by Boston Gas. Order at 110. Boston Gas seeks reconsideration of the Department's rejection of its proposal to use the property valuation reports as a measure of property tax expense.

### 2. Positions of the Parties

### a. <u>The Company</u>

According to the Company, new evidence demonstrates that municipal assessments of Boston Gas's property closely track net book values within the respective communities, thus confirming the reasonableness of the Company's proposal (Company Motion at 30-31).

### b. Attorney General

The Attorney General opposes the Company's request for reconsideration on this issue. The Attorney General contends that the Department's treatment of property taxes was both correct and sound as a matter of well-established ratemaking precedent and policy (Attorney General Response at 15-16). Moreover, the Attorney General argues that Boston Gas seeks to include extra-record evidence to support its position, in contravention of Department precedent (id. at 16, citing Western Massachusetts Electric Company,

G.L. c. 59, § 29 requires Boston Gas to provide a property valuation report to each community served by the Company, detailing the net book value its property within the respective community.

D.P.U. 86-280-A at 16-17 (1987); Western Massachusetts Electric Company,
D.P.U. 85-270-C at 18-20 (1986)). Therefore, the Attorney General concludes that the Company's argument on this issue should be rejected (id. at 17).

### 3. Analysis and Findings

The Department's long-standing policy is to base property tax expense on the most recent property tax bills received by the utility. <u>Boston Gas Company</u>, D.P.U. 93-60, at 220 (1993); <u>Boston Gas Company</u>, D.P.U. 88-67, Phase I at 165-166 (1988); <u>Colonial Gas Company</u>, D.P.U. 84-94, at 19 (1984). <u>Compare Massachusetts-American Water Company</u>, D.P.U. 95-118, at 148 (1996) (construction costs associated with water treatment facility placed into service near issue date of order represented reasonable proxy of valuation in absence of actual property tax bills).

The Company's argument that its property valuation reports provide a reliable indicator of property tax expense is based on evidence that Boston Gas sought to include in the record after the Order was issued, and which the Department excluded from consideration. D.P.U. 96-50-B at 8-10. Even if the evidence had been admitted into the record, the information would not have a significant impact upon our decision to disallow the Company's proposed use of property valuation reports. In the absence of an actual tax bill from the community reflecting the then-current plant valuation, it would be speculative to project when the Company's plant investment for a particular community would be reflected in its property tax bills. Moreover, the Department reaffirms its original findings that net book values may not necessarily be relied upon in the future for assessment purposes by communities. The Department finds that the Company is attempting to reargue issues already considered and decided in the Order.

The Company has not brought to light any previously unknown or undisclosed facts that would have a significant impact on the decision already rendered, as contemplated by the Department's standard. Further, the Company has not demonstrated that the Department's treatment of this issue was the result of mistake or inadvertence. Therefore, the Company has failed to meet the Department's standard for reconsideration. Accordingly, the Department denies the Company's motion for reconsideration of its adjustment for property tax expense.

### VI. RETURN ON COMMON EQUITY

#### A. Introduction

In its Order, the Department found that the allowed rate of return on common equity ("ROE") for Boston Gas is 11.00 percent. Order at 133. Boston Gas seeks reconsideration of the Department's decision to grant an 11.00 percent ROE.

#### B. Positions of the Parties

#### 1. The Company

Boston Gas claims that the 11.00 percent ROE does not appear competitive relative to other investment opportunities and will likely cause its parent corporation, Eastern Enterprises, Inc. to look elsewhere for investment opportunities (Company Motion at 31). In addition, Boston Gas claims that an 11.00 ROE might have a negative impact on the Company's credit quality (id. at 31). Further, Boston Gas claims that because PBR plans are considered to be more risky than traditional cost of service ratemaking, its allowed ROE should reflect this additional risk (id.). Therefore, Boston Gas requests that the Department revise the ROE, at a minimum, to 11.25 percent, the rate approved by the Department in the Company's last rate proceeding, and agreed to by the signatories to the Settlement of

November 15, 1996 (id. at 32).

### 2. Attorney General

The Attorney General asserts that the Department should deny the return of 11.25 percent requested by the Company (Attorney General Response at 31). The Attorney General argues that the Company has failed to meet the Department's standard for reconsideration and has not presented any extraordinary circumstance warranting a fresh look at the record (id.). The Attorney General maintains that the Company's argument that the Order does not provide revenues at as high a level as it anticipated is based on unsworn statements that should not be entertained on reconsideration (id.).

The Attorney General supports the Department's approval of an 11.00 percent ROE for the following reasons: (1) it is well within the bounds of reasonableness; (2) the 25 basis points differential, between the ROE approved by the Department and the one agreed to in the Settlement, is reasonable given the changes in the cost of capital that have occurred since the Company's last rate case, D.P.U. 93-60; and (3) the Department recently granted an ROE of 11.00 percent in another utility's rate case (id. at 31, citing Massachusetts Electric Company, D.P.U. 95-40 (1995)). Further, the Attorney General notes that other utility commissions have adopted ROE's of similar magnitude to the ROE approved for Boston Gas, from a low of 10 percent to a high of 11.25 percent (id. at 31-32, citing Re Central Hudson Gas & Electric Corporation, 173 PUR4th, 42 (N.Y.P.S.C. October 3, 1996); Re Laclede Gas Company, 172 PUR4th, 83 (Missouri P.S.C. August 28, 1996); Re Cascade Natural Gas Company, 171 PUR4th, 479 (Washington U.&T.C. July 22, 1996); Re Minnegasco, a Division of NorAM Energy Corp., 170 PUR4th 193 (MN.P.U.C. June 10, 1996); Re Montana Power Company, 169 PUR4th, 621 (Montana P.S.C. May 31, 1996); Re Kansas

Gas Transport, Inc., 171 PUR4th, 386 (Kansas State C.C. April 13, 1996)). The Attorney General concludes that the 11.00 percent ROE granted in the instant case is appropriate (id. at 32).

## C. Analysis and Findings

In reaching its determination of the Company's ROE, the Department followed the U.S. Supreme Court decisions in Bluefield Water Works and Improvement Company v. Public Service Commission of West Virginia, 262 U.S. 679 (1923), and Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591 (1942), which provide that the allowed ROE should preserve a company's financial integrity, allow it to attract capital on reasonable terms, and be comparable to earnings on investments of comparable risk. In addition the Department took into consideration historical and projected growth rates, the Company's most recent long-term offerings, the growth rates on a number of economic indicators, and the range of returns on equity granted in recent Department rate cases.

Moreover, contrary to the Company's assertions, the Department considered the risks and benefits arising from the implementation of PBR, both generally and specifically associated with the PBR plan approved in the Order. With respect to Boston Gas's arguments based on new exhibits and testimony, the Department has excluded this information from consideration. D.P.U. 96-50-B at 8-10.

The Company has not brought to light any previous unknown or undisclosed facts that would have a significant impact on the decision already rendered, as contemplated by the Department's standard. Further, the Company has not demonstrated that the Department's treatment of this issue was the result of mistake or inadvertence. The Department finds that the Company is merely attempting to reargue issues long after the record in this proceeding

has closed and a final Order issued. Therefore, the Company has failed to meet the Department's standard for reconsideration. Accordingly, the Department denies the Company's request for reconsideration of its ROE.

### VII. PERFORMANCE-BASED REGULATION PLAN

#### A. Productivity Offset

#### 1. Introduction

In its Order, the Department established a productivity offset for the Company's price cap plan that included four components: (1) a productivity growth index, which was intended to reflect the historical average annual growth in productivity, during a specified time period, for the companies that comprise a regulated industry; (2) an input price growth index, which was intended to reflect the historical average annual growth in input prices, during a specified time period, for the companies that comprise a regulated industry; (3) a consumer dividend factor, which was intended to reflect expected future gains in productivity for the companies that comprise a regulated industry, due to the move from cost-of-service to performance-based regulation; and (4) an accumulated inefficiencies factor, which was intended to reflect the inefficiencies built into the base rates for companies that comprise a regulated industry, because of the historic use of cost of service regulation. Order at 274-284.

In establishing a total productivity offset equal to 2.0 percent, the Department set both the consumer dividend and accumulated inefficiencies factors equal to 1.0 percent. The Company seeks reconsideration of the Department's decision pertaining to the consumer dividend and accumulated inefficiencies factors (Company Motion at 32).

## 2. Positions of the Parties

### a. The Company

The Company asserts that, in setting the consumer dividend factor equal to 1.0 percent, the Department has double-counted the benefits to be gained from both the implementation of the QUEST program and the increased throughput from the Company's unbundling program (Company Motion at 37). The Company asserts that the 0.4 percent productivity growth index established by the Department already reflects productivity gains resulting from re-engineering efforts undertaken by the gas distribution companies included in the Company's productivity study (id. at 38). The Company argues that, by specifically including anticipated QUEST savings in the consumer dividend, the Department has inadvertently double-counted those savings (id.).

In addition, the Company asserts that the Department has inadvertently double-counted the effects of increased throughput as a result of gas unbundling because these effects are already included in the Company's productivity growth index (id. at 38-39). The Company notes that the Department rejected the -0.1 percent productivity growth for regional companies calculated in its productivity study and, instead, adopted the 0.4 percent productivity growth for nationwide companies, in part because the productivity levels calculated in the study did not reflect growth in throughput volumes (id.). The Company contends that this increase in productivity appropriately accounts for increased throughput volumes and that the consumer dividend should not recount the results of unbundling which the Department has already built into the productivity offset (id.). Based on the above, and new testimony and exhibits regarding the consumer dividend factor submitted with its

Company's proposed 0.5 percent consumer dividend factor is appropriate (id.).

With respect to accumulated inefficiencies, the Company asserts that the incorporation of such a factor in its price cap plan is unwarranted because the Department found the Company's rates to be just and reasonable three years ago (id. at 34). The Company argues that the inclusion of an accumulated inefficiencies factor as an add-on to the productivity offset is "retroactive ratemaking in its quintessential form" (id. at 35). Based on the above, and new testimony and exhibits regarding the accumulated inefficiencies factor submitted with its Motion, the Company seeks reconsideration of the inclusion of a 1.0 percent accumulated inefficiencies factor in the Company's productivity offset (id.).

## b. <u>Attorney General</u>

The Attorney General states that the Company does not set forth any extraordinary circumstances warranting the Department to take a fresh look at the record (Attorney General Response at 26). The Attorney General provides two additional reasons to reject the Company's arguments regarding QUEST. First, the Attorney General asserts that it is clear that the productivity offset does not include the effects of QUEST because the Company did not begin the implementation of QUEST until 1995 (id. at 27). Second, the Attorney General contends that re-engineering programs would artificially reduce, rather than increase, the productivity offset because these programs require "extraordinarily" high non-recurring costs (id.).

### c. Bay State Gas

Bay State maintains that, if, as Boston Gas argues, savings from implementation of the QUEST program are already reflected in the cost of service, including those savings in consumer dividend factor would be "double dipping" (Bay State Response at 4-5). Bay State further maintains that, if all potential net savings from productivity and unbundling initiatives are returned to consumers at the outset, there is little opportunity for a local distribution company ("LDC") to earn an adequate return during the term of a PBR plan (<u>id.</u>). With respect to the productivity benefits to be gained from industry unbundling, Bay State claims that these benefits will not be realized for several years (<u>id.</u> at 5 n.2).

Bay State asserts that there is no evidence to support the Department's findings regarding accumulated inefficiencies (<u>id.</u> at 5). In addition, Bay State contends that the productivity offset included in the Company's price cap plan is designed in such a way so as to penalize a historically inefficient LDC (<u>id.</u>). Bay State argues that applying the NYNEX decision to the gas industry fails to recognize the technological differences and changes in a particular industry (id.).

## 3. Analysis and Findings

## a. <u>Consumer Dividend Factor</u>

In setting the productivity offset included in Boston Gas's price cap plan equal to 2.0 percent, the Department established a consumer dividend factor equal to 1.0 percent, the same consumer dividend factor established by the Department in the NYNEX price cap plan in D.P.U. 94-50.<sup>18</sup> Order at 279-281. The Department stated that, while the potential for efficiency improvements is greater in the telecommunications industry than in the gas distribution industry due to rapid technological advances occurring in telecommunications, two additional factors should result in increased productivity for Boston Gas during the term of the price cap plan: (1) future productivity gains from implementation of the Company's QUEST program not captured during the test year or post-test year periods; and (2) an

The consumer dividend factor is referred to as the "stretch factor" in NYNEX.

anticipated increase in gas delivery throughput due to unbundling in the gas industry and the corresponding increased activities of gas marketers. <u>Id.</u> The Department rejected the Company's proposed 0.5 percent consumer dividend factor and found that 1.0 percent is an appropriate and reasonable adjustment to account for expected productivity gains due to movement away from cost of service regulation. Id. at 281.

The productivity offset is intended to reflect the productivity growth that, on average, gas distribution companies in the Northeast can be expected to achieve during the term of the plan. As stated above, this offset includes two productivity components: (1) an historic productivity component, the productivity growth index; and (2) a future productivity component, the consumer dividend factor. The Department agrees with Boston Gas that the productivity growth index reflects the productivity benefits achieved through re-engineering programs undertaken by the companies included in the Company's productivity study.

Accordingly, the Department concludes that, by including the projected QUEST benefits in the determination of the consumer dividend factor, the Department inadvertently "double-counted" the benefits achieved through the Company's reengineering efforts -- once through the productivity growth index and a second time through the consumer dividend factor. Therefore, the Department grants the Company's request for reconsideration of the inclusion of the anticipated benefits from implementation of QUEST in the consumer dividend factor.<sup>19</sup>

In its Order at 274-275, the Department stated that a price cap plan should reward those companies whose historical growth in productivity exceeded the industry's historical

Consistent with its findings in D.P.U. 96-50-B, the Department has excluded from consideration new information regarding the consumer dividend factor presented by the Company in its Motion.

average (<u>i.e.</u>, those companies should have the opportunity to earn additional profits). Companies whose future productivity growth (<u>i.e.</u>, its productivity growth over the term of the price cap plan) may exceed the industry average should have the same opportunity to earn additional profits. The Department concludes that, because the consumer dividend factor established in the Order includes the projected productivity gains associated with the QUEST program, the Company would be denied this opportunity, even if it is able to achieve future productivity gains that exceeded the industry average. Therefore, the Department finds that it is inappropriate to include the projected productivity gains associated with the QUEST program in the consumer dividend factor.

With respect to the effects of industry unbundling, the Department rejects the Company's argument that these effects are adequately accounted for in the productivity growth index and, as such, should not be included a second time in the consumer dividend. The productivity growth index was intended to reflect historic productivity growth. The effects of increased throughput that are included in the productivity growth index established by the Department reflect industry unbundling that occurred during the period covered by the Company's productivity study. The projected increase in throughput that was included in the consumer dividend factor was intended to reflect the expansion of unbundling (to include smaller commercial and industrial customers, as well as residential customers) that was projected to take place during the term of the price cap plan.

However, the Department inadvertently failed to recognize that the benefits to be gained from the further unbundling of the gas industry may not be realized for several years. Therefore, the Department grants the Company's request for reconsideration on this matter. Although the Department remains convinced that increased throughput will result from

further unbundling efforts, the rate at which unbundling will occur is uncertain at this time. Thus, it is uncertain whether the resulting increase in throughput that should result from unbundling will occur during the term of the plan. Accordingly, the Department finds that it is inappropriate to include the effects of industry unbundling in the consumer dividend factor.

Based on the above analysis, the Department concludes that the consumer dividend factor should not include the projected savings from implementation of QUEST nor from further unbundling of the gas industry. The Department finds that eliminating these factors results in a consumer dividend factor that is equal to 0.5 percent.

#### b. Accumulated Inefficiencies

In NYNEX, at 166-167, the Department found that accumulated inefficiencies exist in the rates of regulated companies. In its Order, the Department found that these inefficiencies must be taken into consideration in the Company's price cap formula in order for its ratepayers to receive some of the benefits associated with eliminating these inefficiencies. Order at 282. The Department also found that "the finding in NYNEX regarding accumulated inefficiencies in the telecommunications industry is an appropriate proxy for the level of accumulated inefficiencies in the gas distribution industry," reflective of the fact that both industries have operated under cost-of-service regulation for over 100 years. Id. at 283.

The Department finds that the Company has not brought to light any previously unknown or undisclosed facts that would have a significant impact on the decision already, as contemplated by the Department's standards. Consistent with its findings in D.P.U. 96-50-B, the Department has excluded from consideration new information regarding accumulated inefficiencies presented by the Company in its Motion. Therefore, the Department denies the Company's request for reconsideration of the inclusion of a

1.0 percent accumulated inefficiencies in the productivity offset.

## B. Service Quality Index

### 1. Introduction

In its Order, the Department established a service quality index ("SQI") for the Company's price cap plan that is composed of seven performance measures: (1) response to odor calls; (2) lost time from accidents; (3) telephone service; (4) service appointments; (5) number of customer complaint cases before the Department; (6) customer bill adjustments mandated by the Department; and (7) meter reading. Order at 293-311. The Department established a maximum penalty of \$700,000 for each performance measure, for a total maximum penalty equal to \$4.9 million. Order at 310.

The Company seeks reconsideration and clarification of the Department's decision pertaining to: (1) telephone service factor; (2) customer complaint statistics; (3) customer bill adjustments; (4) the total maximum penalty, as well as the penalty associated with each of the seven measures; and (5) the measurement period to be applied to the PBR plan (Company Motion at 39-50).

## 2. <u>Telephone Service Factor</u>

#### a. Introduction

The Department established a benchmark for the telephone service factor ("TSF") that requires the Company to answer 95 percent of emergency calls and 80 percent of billing and service calls within 30 seconds in order for the Company to avoid incurring a penalty. Order at 305-306. The Company seeks reconsideration and clarification of the TSF benchmark.

# b. Positions of the Parties

# i. The Company

The Company asserts that the call volume that occurred during the four-month period that the Department relied upon to establish the TSF benchmark, March 1, 1996 through June 30, 1996, is not representative of the Company's annual call volume (Company Motion at 43). According to the Company, this period does not account for unusual operating conditions, such as the recent flood, which resulted in a spike in emergency calls, and does not include (1) peak calling periods of August and September when college students return to the area, (2) initial cold weather/no-heat calls that occur during the fall months, and (3) severe winter weather months (id. at 43 n.11). The Company claims that, because these factors result in an increased number of calls to the Company, the Department-approved benchmark does not represent a realistic performance level for the Company (id. at 43). In addition, the Company provided new testimony and exhibits regarding its TSF performance to support its claim.

The Company contends that meeting the targeted benchmark would require the hiring of additional customer inquiry employees, the costs for which would not be recoverable in its base rates (<u>id.</u> at 44). The Company states that, since this incremental cost would exceed the maximum TSF penalty, "the only rational business decision for the Company would be to forego the cost to achieve the benchmark, seek to reduce costs in its telephone inquiry area, and accept the penalty as an annually occurring expense" (<u>id.</u>).

The Company contends that its proposed benchmark of 90 percent of emergency calls and 80 percent of billing and service calls answered within 40 seconds would provide a performance stretch for the Company which is achievable at minimal incremental cost.

Therefore, the Company requests that the Department adjust the TSF benchmark back to the Company's proposal (<u>id.</u> at 44-45).

Finally, the Company maintains that the Department's Order was unclear on the weight to be accorded each performance measure and, therefore, requests clarification of how the Company's actual TSF performance will be calculated (id. at 45). The Company asserts that, because the same resources are utilized to respond to both types of calls, and the billing and service goal should never take precedence over the goal of responding to the safety of its customers, the penalty should be applied to the absolute value of the composite of the two indices (id.).

### ii. Attorney General

The Attorney General urges the Department to disregard the new evidence presented by the Company supporting its claim that the Department failed to consider the cost of attaining the SQI benchmarks (Attorney General Response at 28).

#### iii. Bay State Gas

Bay State states that, to the extent that the incremental cost necessary to meet the TSF benchmark is higher than the penalty, Boston Gas would have the perverse incentive to "do nothing and pay less" (Bay State Response at 10).

# c. <u>Analysis and Findings</u>

In <u>NYNEX</u> at 235, the Department stated that a well-designed price cap plan must include some form of protection against a reduction in a company's service quality. The SQI benchmarks established by the Department for Boston Gas were intended to protect the Company's customers against a reduction in quality of service. Order at 304, <u>citing NYNEX</u> at 235. Although the Department strongly encourages companies to seek ways to improve

their performance, the SQI benchmarks established in this proceeding were not intended to require the Company to improve its performance in order to avoid incurring a penalty.

In its Order, the Department found that the Company's proposed TSF benchmark was too low in consideration of actual experience during the period between March 1, 1996 and June 30, 1996. Order at 305-306.<sup>20</sup> In its Motion, the Company argues that the TSF data from this four-month period are not representative of a full year's data because they do not include several factors that will result in an increased number of calls to the Company. Consistent with the Company's argument, the Department considers it likely that the Company's TSF data will show that the percentage of emergency and billing and service calls that the Company responded to within a specified amount of time (i.e., 30 or 40 seconds) will be lower for the twelve-month period beginning March 1, 1996 (i.e., March 1, 1996 through February 28, 1997) than it was for the four-month period beginning March 1, 1996. The Department concludes that the appropriate time period upon which the TSF benchmark should be based is the twelve-month period beginning March 1, 1996. By basing the TSF benchmark on the four-month period beginning March 1, 1996, the Department finds that it inadvertently set the benchmark at an artificially high level that would penalize the Company for maintaining current service quality standards. Accordingly, the Department grants the Company's request for reconsideration of the benchmarks for the TSF performance measure.21

During this period, 93 percent of emergency calls and 77 percent of billing and service calls were answered within 30 seconds. See Order at 305.

Consistent with its findings in D.P.U. 96-50-B, the Department has excluded from consideration new information regarding TSF performance presented by the Company in its Motion.

As stated above, the TSF benchmark should be based on the Company's performance during the twelve-month period beginning March 1, 1996. However, this information does not exist in the record in this proceeding. The Department finds that, in the absence of this information, the benchmark proposed by the Company is appropriate for the first year of the price cap plan. The Department directs the Company to submit TSF data for the twelve-month period, March 1, 1996 through February 28, 1997, with its first price cap compliance filing. At that time, the Department will reevaluate the TSF benchmark for the remainder of the price cap plan, based on the Company's performance during this twelve-month period.

Finally, with respect to the Company's request for clarification of how the Company's actual TSF performance will be calculated, the Department agrees that the Order is ambiguous as to the combined treatment that will apply to the emergency- and billing and service-related calls. Accordingly, the Department grants the Company's request for clarification on this matter. The annual TSF benchmark will be calculated by weighting the specified percentages for emergency and billing/service calls (e.g. 90 percent for emergency calls and 80 percent for billing/service calls for the first year of the plan) in accordance with the ratio of calls received in each category to the combined total. Similarly, the Company's actual performance will be calculated by weighting the actual percentages for emergency and billing/service calls in accordance with the ratio of calls received in each category to the combined total.

# 3. Consumer Division Statistics

#### a. Introduction

In its Order, the Department established two performance measures based on statistics tabulated by the Department's Consumer Division. The benchmarks for these measures require that (1) the number of Consumer Division complaint cases for Boston Gas in a particular year shall be no more than 50 percent of the total number of customer complaint cases for all of the Massachusetts LDCs; and (2) the dollar amount of Consumer Division customer bill adjustments for Boston Gas shall be no more than 65 percent of the total dollar amount of customer adjustments for all of the Massachusetts LDCs. Order at 307-310.

### b. Positions of the Parties

# i. <u>The Company</u>

Boston Gas makes several arguments in opposition to the Department's inclusion of Consumer Division statistics in the SQI. First, the Company claims that, because the Department found that Boston Gas was operating in accordance with the Department's goal of encouraging all utilities to improve their quality of service, these two measures should not have been added to the SQI (Company Motion at 46, <a href="citing">citing</a> Order at 94). Second, the Company maintains that because bill adjustments are a subset of total Consumer Division cases, the Department's measures constitute double-counting (<a href="id">id</a>. at 47). Third, Boston Gas argues that the inclusion of these data in the SQI would create a perverse incentive to "give away the store" to avoid having billing complaints referred to the Department, thus resulting in higher gas costs for firm sales customers (<a href="id">id</a>.). Fourth, the Company maintains that the inclusion of these measures would reduce the aggressive collection activities undertaken by the Company, thereby increasing bad debt and causing higher gas costs for firm sales

customers (<u>id.</u> at 48). Finally, Boston Gas claims that one large account adjustment could skew the overall results and not be indicative of overall performance (<u>id.</u>).

Boston Gas argues that, for the reasons listed above, the benchmarks are poor indicators of service quality and would provide the Company with the wrong incentives (id. at 48). Boston Gas states that, in order to provide the proper incentives for the Company to maintain its good quality of service, the Department should establish a benchmark that would require the Company to maintain or reduce the level of second referrals and cases received by the Department's Consumer Division over its previous three-year rolling average (id. at 49).

In addition, Boston Gas requests clarification of the following: (1) the precise definition of a case; (2) that commercial accounts not be included in the statistics for purposes of the benchmark, because commercial accounts are not governed by the regulations, 220 C.M.R. 25.00 et seq., related to billing and termination violations; (3) that "goodwill" adjustments the Company makes without a finding be excluded from the benchmark; and (4) how, and in what format, the Consumer Division's customer complaint and bill adjustment records will be reported to the Company and what mechanism will be available to the Company to dispute these records (id. at 49-50).

# ii. Bay State Gas

Bay State supports using targeted customer surveys to measure service quality, rather than consumer complaint statistics (Bay State Response at 11). Bay State proposes that, if the Department reaffirms its use of consumer complaint statistics as a measure of service quality, then Boston Gas' consumer complaint statistics should be measured against the Company's recent history, rather than against the complaints directed at other LDCs (id.).

Bay State asserts that comparing the number of complaints directed at one LDC with the number of complaints directed at other LDCs is unfair, because no LDCs control the customers of other LDCs (id.).

# c. Analysis and Findings

In its Order at 307, the Department found that consumer complaint statistics provide valuable insight into the quality of service provided by the Company. However, because the purpose of the SQI index is to protect customers against a reduction in a company's service quality, the Department agrees with the Company that its performance in this area would be more appropriately evaluated using a benchmark based on its historic performance, rather than one based on the performance of other LDCs. Accordingly, the Department concludes that it inadvertently established benchmarks for the customer complaint and bill adjustment performance measures that are inconsistent with the purpose of the SQI. Therefore, the Department grants the Company's request for reconsideration on this point.

The Department agrees in principle with the Company's proposal to use its three-year rolling average to derive the benchmarks for the customer complaint and bill adjustment measures. However, the Department considers it appropriate to use the year 1995 as the initial year for determining the Company's three-year rolling average. This is because, as noted by the Department in its Order at 94, the Company achieved noticeable reductions in customer complaints and bill adjustments during the years 1995 and 1996. If the Company's performance prior to 1995 were to be included in these benchmarks, its customers would not be adequately protected against a reduction in the quality of service currently provided by the Company. Therefore, during the first twelve-month period that these performance measures

will be included in the SQI, beginning November 1, 1997,<sup>22</sup> the benchmark will be derived using the average of the Consumer Division statistics for the two-year period, July 1, 1995 through June 30, 1997. For the remainder of the term of the price cap plan, a rolling average of the previous three years' customer complaint and bill adjustment data will be used to derive the benchmark to be in effect in a particular year.

The adoption of the three-year rolling average method should satisfy most of the concerns expressed by the Company. First, it should alleviate the Company's concerns regarding the double counting of bill adjustments, since this same effect would be reflected in the benchmark. Similarly, the Company should have no incentive to "give away the store" to avoid billing complaints or to reduce its collection activities. Because the benchmark will based on its historic performance, the Company should have the appropriate incentive to, at a minimum, maintain its current quality of service in these areas.

Contrary to the Company's claims, the Department considers the occurrence of large bill adjustments to be important indicators of overall service quality performance that should be duly reflected in the Company's SQI. Because the Department requires bill adjustments only in instances when the Company has not performed adequately, it is entirely within the Company's control to minimize these adjustments. In addition, the Company has the opportunity to dispute a bill adjustment through the Department's dispute resolution process.<sup>23</sup> Therefore, the Department finds that it would be inappropriate to exclude dollars

As discussed in Section VII.B.5, below, the performance measures based on the Consumer Division's customer complaint and bill adjustment statistics will not be included in the SQI during the first year of the price cap plan.

This process includes the opportunity for an informal hearing with the Consumer Division and the right to appeal a Consumer Division decision to the Commission.

resulting from large bill adjustments from the SQI.<sup>24</sup>

The Company maintains that it is seeking clarification regarding (1) the definition of a customer complaint case, (2) the inclusion of goodwill adjustments in the Consumer Division bill adjustment statistics, and (3) the inclusion of commercial complaints in the customer complaint statistics. However, the argument in the Company's Motion actually seeks reconsideration of the Department's decision on these matters. Accordingly, we will treat the Company's request as reconsideration.

The Department notes that all three of these issues will be handled in a manner consistent with the Consumer Division's well-established practices. As such, (1) a customer complaint case will continue to be defined as a case in which the Consumer Division is required to place a telephone call to the Company on behalf of a customer because the customer has indicated that he or she has been unable to resolve satisfactorily a dispute with the Company, (2) dollars associated with goodwill bill adjustments will continue to be included in the bill adjustment statistics, and (3) complaints from commercial customers will continue to be included in the customer complaint statistics. The Department finds that the Company has not brought to light any previously unknown or undisclosed facts that would have a significant impact on the decisions already made, as contemplated by the Department's standards. Therefore, the Company's request for reconsideration on these

The Department notes that the adoption of the three-year rolling average method should mitigate the Company's concern regarding a single large account adjustment because, if the Company has made such adjustments historically, then the dollars from these adjustments would be included in the benchmark, resulting in a higher benchmark dollar level.

matters is denied.25

The Department finds that the method by which the penalties for the complaint case and bill adjustment performance measures will be applied must be modified to accommodate the changes in the design of these measures.<sup>26</sup> The Department recognizes that the number of customer complaints and the level of bill adjustments may vary with circumstances that are not entirely under the control of the Company. In particular, significant changes in weather from previous years may result in increases in the number of complaints and bill adjustments that do not reflect poor performance. Therefore, the Department determines that, for both measures, a bandwidth of ten percent is appropriate for which no penalties will be applied; i.e., if, in a particular year, the Company's complaint cases or bill adjustment dollars exceed its historical averages by ten percent or less, no penalty will result. For each one percent increment that the Company's complaint cases or bill adjustment dollars exceed 110 percent of its historical averages, a \$140,000 penalty will be applied for each performance category.<sup>27</sup> The \$700,000 maximum penalty for each category will be reached when complaint cases or bill adjustment dollars exceed the historical averages by more than 14 percent.

Nevertheless, the Company's concerns regarding these matters should be alleviated because the benchmark will be based on its historic performance.

This is consistent with the Department's Order at 310, in which the Department modified the Company's proposed method of applying the SQI penalties in order to accommodate the changes in the design of the SQI that the Department found appropriate.

For example, if, in a particular year, the Company's customer complaint statistics exceeded its historical average by 12.5 percent, the Company would incur a penalty of \$420,000.

Finally, the Department acknowledges that the Order was silent on the manner in which the Consumer Division statistics will be made available to the Company and what opportunities the Company will have to dispute these statistics. Therefore, the Department grants the Company's request for clarification on this matter. The Consumer Division will provide via facsimile its customer complaint and bill adjustment statistics to the Company within 15 days of the end each month.<sup>28</sup> The Company subsequently will have 15 days to report and contest any discrepancies with the Consumer Division.

### 4. Penalty

# a. <u>Introduction</u>

In its Order, the Department established a maximum penalty of \$700,000 for each performance measure, for a total maximum penalty of \$4.9 million. Order at 310. The Company seeks reconsideration of this determination.

#### b. Positions of the Parties

#### i. The Company

Boston Gas argues that the \$700,000 penalty per performance measure established by the Department appears to have been chosen arbitrarily. The Company notes that the total amount of \$4.9 million represents 2.0 percent of its distribution service revenue, a level twice as large as was approved by the Department for NYNEX in D.P.U. 94-50 (Company Motion at 41). Therefore, the Company requests that the Department reconsider what it characterizes as an inadvertent result, and implement a maximum penalty that is proportional to that found in NYNEX, or \$2.5 million (id.).

This is consistent with the Consumer Division's current practice.

# ii. Attorney General

The Attorney General disagrees with the Company's characterization of the Department's finding on the SQI penalty being a result of inadvertence (Attorney General Response at 29). In addition, the Attorney General asserts that the Company's reliance on <a href="MYNEX"><u>NYNEX</u></a> to determine the appropriate penalty is without merit (id.). The Attorney General points out the since the issuance of <a href="MYNEX"><u>NYNEX</u></a>, the Department is better able to assess the impact that the penalties have on ensuring quality of service (id.). Therefore, the Attorney General recommends denying the Company's request for reconsideration.

#### iii. Bay State Gas

Bay State asserts that the \$4.9 million maximum penalty is excessive because neither the Department, Boston Gas, nor other LDCs have experience with the measures adopted for assessing service quality (Bay State Response at 11). Bay State contends that, without such experience, there is no way to be certain that the targets are established at the appropriate levels (id. at 12).

### c. Analysis and Findings

As stated above, the SQI benchmarks are intended to protect the Company's customers against a reduction in its service quality. The Department considers it essential that the penalty for failing to meet the benchmarks be of sufficient magnitude that the penalty would exceed any savings the Company could realize from reducing its quality of service.

Otherwise, the price cap plan could provide the Company with a perverse incentive to reduce

its quality of service.29

Regarding the Company's assertion that the Department acted arbitrarily, a violation of the concept of reasoned consistency occurs only when there is an "unexplained deviation" from a prior pattern. Boston Gas Company v. Department of Public Utilities, 367 Mass. 92, 92-105 (1975). Further, the Court previously has found that the Department's findings in one prior proceeding do not constitute a pattern from which the Department cannot deviate. Robinson v. Department of Public Utilities, 624 N.E. 2nd 951, 416 Mass. 668 (1993). This is particularly significant when the proceedings deal with separate companies operating in separate industries. The Department's task is to bring its specialized expertise to bear in making findings that are in the best interest of ratepayers of the company in question.

Costello v. Department of Public Utilities, 391 Mass. 527, 539 (1984) (the Court accords great deference to the "experience, technical competence, and specialized knowledge" of the Department). Contrary to the Company's interpretation, the Department expressly intended to implement an SQI penalty different from that of NYNEX.

The Department finds that the Company has not brought to light any previously unknown or undisclosed facts that would have a significant impact on the decision already made, as contemplated by the Department's standards. Therefore, the Company's request for reconsideration on this matter is denied.

This is consistent with the Company's argument that, if the TSF benchmark were established at a level that would require it to improve its quality of service, the Company might have the perverse incentive to reduce its service quality if the resulting penalty were less than the costs that would have to be incurred to meet the benchmark.

# 5. Measurement Period

#### a. Introduction

In D.P.U. 96-50, Boston Gas proposed that the SQI measurement period (<u>i.e.</u>, the period of time used to determine whether the Company has met its SQI benchmarks) begin on July 1 of each year and run through June 30 of the following year, with the annual reviews occurring in conjunction with the price cap compliance filings. Order at 297. The Department did not explicitly approve the measurement period in the Order. The Company seeks clarification of the initial measurement period of the SQI (<u>i.e.</u>, the measurement period for the first year of the price cap plan).

# b. Position of the Company

Boston Gas proposes that the initial SQI measurement period begin on July 1, 1997 for effect in year two of the price cap plan, beginning on November 1, 1998 (Company Motion at 42). The Company contends that, because of the modifications that the Department made to the Company's SQI proposal, beginning the measurement period before the second year of the price cap plan would possibly penalize the Company for past performance (id.). As an alternative, Boston Gas states that the measurement period could begin on January 1, 1997. The Company notes that this would result in a six month measurement period for year one, which may not accurately reflect annual performance (id.). No other parties commented on this issue.

# c. <u>Analysis and Findings</u>

Boston Gas maintains that it is seeking clarification of the initial SQI measurement period established in the Order. However, the argument in the Company's Motion actually seeks reconsideration of the Department's decision on this matter. Accordingly, we will treat

the Company's request as reconsideration.

In its Order, the Department approved the Company's proposed price cap plan with modifications, stating that its customers would be better served by modifications to the proposed plan rather than an outright rejection of the plan. Order at 273. Because the Department did not modify the measurement period proposed by the Company, the proposed period was, in effect, approved. Therefore, the initial SQI measurement period established in the Order was July 1, 1996 through June 30, 1997.

As noted by Boston Gas, the Department made modifications to the performance measures included in the Company's SQI proposal. In particular, the Department (1) modified the benchmark for the meter reading performance measure, <sup>30</sup> and (2) introduced two new performance measures, based on the Department's Consumer Division customer complaint cases and bill adjustments (see Section III.B.3, above). The Department concludes that, by adopting the Company's proposed measurement period, it inadvertently established an initial measurement period that would not afford Boston Gas the opportunity to modify its behavior in an effort to achieve the new performance levels included in the SQI. Therefore, the Department grants the Company's motion for reconsideration on this issue.

The Department establishes the following measurement periods for the first year of the price cap plan. For those performance measures for which the Department approved the benchmarks proposed by the Company, the initial measurement period is July 1, 1996 through June 30, 1997. These measures are: (1) response to odor calls; (2) lost time from

The Department established a benchmark of 95 percent on-cycle meter reads, as compared to the 92 percent benchmark proposed by the Company. Order at 306.

accidents; (3) telephone service;<sup>31</sup> and (4) service appointments.

The Department finds that an appropriate initial measurement period for the meter reading measure is the six-month period beginning January 1, 1997. The Department concludes that, for this performance measure, this six-month period should adequately reflect the Company's annual performance. Finally, for the two performance measures associated with the Consumer Division's customer complaint cases and bill adjustments, the Department concludes that, because the number of complaint cases and bill adjustments are likely to fluctuate seasonally, a twelve-month measurement period is necessary. Therefore, the Department finds that it is appropriate to delay the introduction of these measures into the SQI until the second year of the plan, at which time a twelve-month measurement period can be included. The Department emphasizes that, during the second and remaining years of the price cap plan, the measurement period for all performance measures will be the preceding July 1 through June 30.<sup>32</sup>

As discussed in Section VII.B.2, above, the TSF benchmark will be as proposed by the Company for the first year of the price cap plan.

Year two of the price cap plan will run from November 1, 1997 through October 31, 1998. The SQI measurement period for year two, for all of the performance measures, will be July 1, 1997 through June 30, 1998. Any resulting penalties from this time period would be reflected in the Company's rates during the third year of the plan, beginning November 1, 1999.

# 6. Conclusion

The following is a list of measures and benchmarks that shall be incorporated in the SQI:

Customer Service Category	Performance Measure	Benchmark/ Target Value
Safety	(1) Class I and II odor calls responded to in 60 minutes or less	95%
	(2) Three year running average for lost time accidents	Less than the three year average
Service	(3) Telephone Service Factor - (Year 1) Calls answered within 40 seconds	90% - Emergency 80% - Service and Billing
	(Years 2-5) To be determined at time of first year con-	npliance filing review.
	(4) Service appointments met on the same day requested	95%
	Department Consumer Division Statistics- (Year 1) NONE	
	<ul><li>(Year 2)</li><li>(5) customer complaint cases</li><li>(6) bill adjustment dollars</li></ul>	110 % of two-year average 110 % of two-year average
	<ul><li>(Years 3-5)</li><li>(5) customer complaint cases</li><li>(6) bill adjustment dollars</li></ul>	110 % of three-year average 110 % of three-year average
Billing	(7) Actual on-cycle meter reads	95%

# C. Customer Charges

# 1. Introduction

In its Order, the Department directed the Company to restrict any increase in customer charges to the rate of inflation during the initial term of the PBR plan. Order at 333-335. The Company seeks reconsideration of the Department's disposition of customer

charges (Company Motion at 51)

# 2. Positions of the Parties

# a. The Company

The Company had proposed to move toward full embedded cost-based customer charges in a gradual manner over the initial term of the PBR plan (Company Motion at 51, citing Exh. BGC-75, at 22). Boston Gas claims that the Department made its decision regarding customer charges without information regarding the embedded costs (Company Motion at 51). The Company asserts that as a result of the Department's determination, Boston Gas's customer charges probably will not attain the embedded cost rate during the initial term of the PBR plan (id.). The Company requests that, based on new evidence of embedded cost data submitted with the Company's Motion, the Department reconsider its decision to restrict any increase in customer charges to the rate of inflation (id. at 51-52).

### b. Attorney General

The Attorney General states that the Department should deny the Company's request for reconsideration of the issue of customer charges because (1) in making its decision the Department was well within its expertise, discretion, and ratemaking authority, (2) the Company has not pointed to any record evidence showing that extraordinary circumstances exist that warrant a fresh look at the record, and (3) the Department's decision on customer charges is consistent with its decision in <a href="NYNEX">NYNEX</a>, D.P.U. 94-50, at 216 (1995) (Attorney General Response at 35-36).

#### c. MOC

MOC states that the Department should deny the Company's request for reconsideration of customer charges because the Department's determination meets its goals

of fairness, rate continuity, and equity, and advances the Company's goal of reducing subsidies (MOC Response at 8-9). In addition, MOC argues that the Company failed to present any "extraordinary" arguments or facts that warrant reversal of this determination (id.).

# 3. Analysis and Findings

The Company's argument with respect to customer charges is based solely on new exhibits and new testimony that the Department has excluded from consideration.

D.P.U. 96-50-B at 8-10. Further, in its initial filing and during the proceeding, the Company provided the embedded customer cost for each rate class (see Exh. BGC-112; RR-DPU-37). The Department considered this evidence on embedded cost information in deriving the appropriate customer charges, with the knowledge that the actual embedded costs would be slightly lower because of our findings on the Company's revenue requirement. Contrary to the Company's assertions, the Department realized that the customer charges probably would not attain the embedded cost rate during the initial term of the PBR plan. The Department found that the rate of inflation was the largest increase that the Department could authorize. Order at 334. As the Department indicated in its Order, this determination is consistent with our decision in NYNEX. Id. at 334, citing NYNEX, D.P.U. 94-50, at 216.

The Company has not brought to light any previously unknown or undisclosed facts that would have a significant impact on the decision already rendered, as contemplated by the Department's standard. Further, the Company has not demonstrated that the Department's treatment of this issue was the result of mistake or inadvertence. Accordingly, the Department denies the Company's request for reconsideration of its customer charges.

# D. Determination of Initial Rates

In its Order, the Department found that the Company's monopoly distribution service revenue requirement was \$250,019,424. Order at 347. Consistent with our disposition of the Company's Motion as described herein, the Department finds that Boston Gas's monopoly distribution service revenue requirement must be revised to reflect those adjustments.

The Department has found that the revenue requirement approved in this proceeding is \$637,220,095. The removal of \$376,427,430 in CGAC-related items produces a revised distribution cost of service of \$260,792,665. The Department has removed an additional \$9,104,256 for special contract revenues and competitive services, thereby producing a monopoly distribution service revenue requirement of \$251,688,409. Accordingly, the Department finds that the Company's monopoly distribution service revenue requirement is \$251,688,409.

#### VIII. MARGIN SHARING

#### A. Introduction

In its Order, the Department rejected the Company's proposal to pass back through the CGAC 100 percent of earned margins associated with interruptible sales ("IS"), off-system sales, and capacity release ("CR"). Order at 255-256. The Department found that the Company's proposal was premature, and directed Boston Gas to maintain its current margin sharing arrangement for these transactions, whereby the Company returns 75 percent of margins over a predetermined threshold to firm sales customers. Order at 255-256. Boston Gas seeks clarification as to the retention of margins associated with non-core firm transportation agreements entered into pursuant to Boston Gas Company, D.P.U. 92-259

(1993).

# B. Position of the Company

According to Boston Gas, the Company proposed as part of its initial filing to retain all margins earned from distribution services, including firm transportation service provided under tariff, non-core firm transportation service, interruptible transportation ("IT") service, and vehicular natural gas service, net of a one-time buyout (Company Motion at 52). Under its proposal, Boston Gas would have returned to firm customers all margins derived from IS service, sales for resale, and CR (id.).

The Company notes that while the Department directed Boston Gas to maintain its then-existing margin sharing arrangements for IS, off-system sales, and CR, the Order failed to mention the treatment of margins associated with D.P.U. 92-259 non-core firm transportation contracts (id. at 54, citing Order at 257). Boston Gas interprets this silence to mean that the Department approved the Company's request to retain all margins associated with non-core firm transportation contracts executed pursuant to D.P.U. 92-259 (Company Motion at 54).

# C. Analysis and Findings

While the Order discusses the classification of the Company's D.P.U. 92-259 contracts for purposes of establishing the initial rates to which the PBR price changes would be applied, the Order is silent on the treatment of margins associated with these contracts. Accordingly, the Department hereby grants the Company's motion for clarification on this issue.

In D.P.U. 92-259, the Department granted the Company authority to enter into a discrete class of non-firm service contracts, and provided for a 50/50 margin sharing

arrangement. Subsequently, Boston Gas was allowed to unbundle its D.P.U. 92-259 service offerings into city gate sales service and transportation service. Department Letter Order to Boston Gas dated May 12, 1995. As part of this order, the Company was allowed to implement a 75/25 margin sharing arrangement for city gate sales service consistent with that established pursuant to D.P.U. 93-60; the margin-sharing arrangement for the transportation component of this service remained unchanged. <u>Id</u>. <sup>33</sup>

In <u>Interruptible Transportation/Capacity Release</u>, D.P.U. 93-141-A at 64 (1996), the Department found that a 25 percent margin retention factor by LDCs on margins earned in excess of threshold levels earned on respective transactions was reasonable and consistent with the public interest. Additionally, the Department found that these margins were to be based on an historical twelve-month period ending April 30 of each year. <u>Id.</u> Based on the record in this proceeding, and consistent with our decision in D.P.U. 93-141-A, the Department finds that a 75/25 percent margin-sharing arrangement between the Company and ratepayers is appropriate for margins associated with D.P.U. 92-259 non-core firm transportation service. Subject to the threshold to be established in accordance with D.P.U. 93-141-A, 75 percent of the margins associated with the transportation component of D.P.U. 92-259 contracts shall be passed back to firm sales and firm transportation customers.

The Order at 256 states that the current margin sharing arrangement for non-core firm sales was established pursuant to D.P.U. 93-60; the Company's Motion correctly notes that D.P.U. 93-60 did not address non-core firm sales margins, and that the current margin sharing arrangement for this service was most recently modified by Department Letter Order dated May 12, 1995.

# IX. CAPACITY ASSIGNMENT

#### A. Downstream Assets

# 1. Introduction

In its Order, the Department directed the Company to make available to converting firm sales customers, on a voluntary basis, each customer's pro rata share of downstream assets at cost-based rates. Order at 233. The Department stated that such availability should be consistent with the Company's method for allocating pro rata shares of upstream capacity. <u>Id.</u>. Boston Gas requests reconsideration and clarification of the Department's directives on downstream assets (Company Motion at 54, 61).

# 2. Positions of the Parties

# a. <u>The Company</u>

The Company argues that it did not contemplate a pro rata allocation of downstream assets as part of Phase I, and, therefore seeks reconsideration of this directive. According to the Company, the Department's decision raises due process as well as operational concerns (Company Motion at 56). Regarding the Company's due process concerns, Boston Gas contends that the first notice Boston Gas received that the Department intended to decide the allocation of downstream assets was in the Department's Order (id.). Boston Gas asserts that the Company understood that the disposition of downstream assets was a Phase II issue and thus, the record on this issue was not developed (id.). Also, the Company asserts that at the pre-hearing conference of June 20, 1996, although the hearing officer stated that the Department would consider the Company's capacity assignment program in Phase I, the Company's capacity assignment proposal at that time did not include downstream assets (id. at 57). In addition, the Company contends that the Department's ruling on the Motions for Clarification on the Scope of the Proceeding, issued on September 9, 1996, after the close of

hearings, did not specify that downstream capacity would be addressed in Phase I (id. at 58-59).

Regarding its operational concern, the Company contends that the Department's requirement to make pro rata shares of its LNG and propane resources available to third parties to manage on their own would threaten system integrity and jeopardize reliability of service for all customers (id. at 59-60). In support of its argument, Boston Gas filed new evidence, which according to the Company, details the manner in which Boston Gas manages its downstream assets and explains the operating constraints associated with a pro rata allocation of these assets (id. at 60-61). Accordingly, the Company requests that if, notwithstanding the due process question, the Department is still inclined to decide this issue in Phase I, the Department should reconsider its Order based on the new testimony (id. at 61).

Finally, the Company seeks clarification of the Department's directive that the Company is to make available its downstream assets to converting customers (<u>id.</u> at 56). The Company notes that it appears that the Department is directing the Company to modify the balancing service offered as part of its general transportation service so that customers may subscribe on a voluntary basis (<u>id.</u>). According to Boston Gas, the Department's directive would allow converting customers to opt out of the Company's balancing service in favor of competitive alternatives. Boston Gas notes that once the Company implements a self-balancing option based on a sendout formula determination of a customer's daily delivery requirements, the access to downstream assets ordered by the Department will be provided via such option (<u>id.</u>).

### b. TMG

TMG contends that Boston Gas wants the Department to litigate, not reconsider, the allocation of downstream capacity (TMG Response at 3). TMG asserts that this issue was fully investigated, argued, and briefed before the Department, putting Boston Gas on notice that the issue was to be decided as part of Phase I (id.). Therefore, TMG requests that the Department reject Boston Gas' attempt to relitigate the downstream capacity issue (id. at 4).

# 3. Analysis and Findings

On September 9, 1996, after the conclusion of hearings, but prior to the submission of briefs, the Department issued its ruling on the motions for clarification regarding the scope of the Department's investigation of Phase I filed by Boston Gas and TMG ("September 9, 1996 Ruling"). In its ruling, the Department stated, inter alia, that it would address the Company's capacity assignment method, but did not specifically respond to the Company's and TMG's request that the Department clarify whether it would be addressing the issue of the assignment of downstream assets in Phase I of the proceeding. The Department acknowledges that there is record evidence and argument on the issue of the assignment of downstream assets. However, we find that based on our inadvertence in failing to state in the September 9, 1996 Ruling that the assignment of downstream assets would be a Phase I issue, the Company reasonably could have concluded that issue would be addressed in Phase II. Accordingly, we grant the Company's request for reconsideration of our directive regarding the assignment of downstream assets, and will consider this issue as part of our investigation in Phase II. In light of our determination to defer consideration of the assignment of downstream assets until Phase II, the Company's request for clarification is rendered moot.

# B. Extension of Capacity Contracts

#### 1. Introduction

In its Order, the Department directed the Company to extend all of its upstream pipeline and storage capacity contracts necessary to maintain reliability through the interim period. Order at 223. The Department stated that in Phase II it would address whether these contracts should be extended beyond the interim period. <u>Id.</u> Boston Gas requests that the Department clarify what the interim period constitutes. Further, the Company requests clarification as to its obligation to extend certain upstream capacity contracts that require renewals for a minimum term that may extend beyond the interim period (Company Motion at 64-65).

# 2. <u>Position of the Company</u>

Boston Gas asserts that while it can extend certain of its Algonquin contracts that are in evergreen status from year to year, the Company has other contracts that require the Company to provide notice of its intent to terminate or renew for a term certain (<u>id.</u> at 64). The Company states that without knowing the end date of the interim period, the Company is not certain for what term it should extend contracts it deems necessary to maintain reliability (<u>id.</u>). Furthermore, Boston Gas asserts that since certain contracts contain minimum-term renewal provisions, the Company may not be able to negotiate a renewal term that complies with the Department's directive (<u>id.</u> at 64-65). Instead, Boston Gas contends that it may be forced to renew for the minimum term required under the contract (id. at 64-65).

Accordingly, the Company requests that the Department clarify that for any of the Company's upstream capacity contracts which expire or require notice of termination or renewal during the interim period, the Company should negotiate in good faith to extend such contracts through the year 2000, and, if unable to do so, Boston Gas should renew for

the minimum term required by a given contract (<u>id.</u> at 65). No other party commented on this issue.

# 3. Analysis and Findings

While the Department found that all capacity assignment decisions were interim, until a final determination is rendered in Phase II, the Department was ambiguous as to the meaning of the interim period. The Department hereby clarifies its position that the interim period extends from the date of the issuance of the Phase I Order until a final decision is rendered in Phase II.

Regarding the term over which Boston Gas must extend certain upstream capacity contracts, the Department recognizes that many changes will affect the Company's operations over the coming years, but concludes that Boston Gas is in the best position to understand the impact of these changes and react accordingly. During the interim period, we expect that the Company will (1) exercise its best judgement in determining which contracts must be extended in order to maintain system reliability, and (2) negotiate in good faith to extend such contracts for a term consistent with the provision of reliable service. Accordingly, the Department reiterates that the Company must actively manage its capacity assets to maximize efficiency and minimize gas-related costs to end-users during the interim period.

# X. TRANSPORTATION TERMS AND CONDITIONS

# A. <u>Financial Security</u>

#### 1. Introduction

In its Order, the Department found that credit checks currently required by the pipelines provide adequate assurance that a supplier will most likely be able to meet its financial obligations. Order at 376-377. As a result, the Department directed the Company to amend its proposed Terms and Conditions ("T&C") for receipt service to provide that only

suppliers who have failed to meet the pipeline creditworthiness criteria would be required to post financial security. Order at 376-377. The Company seeks reconsideration and clarification of the Department's directives regarding financial security terms.

# 2. Positions of the Parties

#### a. Company

Boston Gas states that under the Company's proposed T&C, suppliers must be and remain approved bidders on upstream pipelines and storage facilities (Company Motion at 62). However, Boston Gas argues that, although the Company can determine whether a supplier is an approved bidder on upstream pipelines and storage facilities, it will not know whether a supplier has posted financial security (id.). Furthermore, the Company claims that even if a supplier posts security to the pipeline, that security cannot be accessed by the Company should the supplier default on its obligation to deliver to the Company's city gate (id.). Boston Gas requests that the Department reconsider its directive, by allowing the Company to require suppliers to provide financial security as originally proposed in the Company's filing. Finally, the Company requests that the Department clarify the phrase "some sort of financial security" so that the phrase refers to the security proposed by the Company (Company Motion at 63).

# b. Global

Global notes that an important first step in delivering natural gas supplies in an economic and efficient manner is to eliminate repetitive and unnecessary credit and security requirements (Global Response at 2). Global asserts that the Company's arguments on this issue are without merit (id.). Global argues that in most cases, the credit standards proposed by the utility are quite similar to those imposed by the upstream pipelines and, therefore, would provide no incremental security to the utility (id.). Global claims that the standards

applied by the upstream pipelines are of sufficient magnitude and stringency to provide adequate protection to ratepayers and will not impose any undue or unnecessary burden on the utility (<u>id.</u>). Global notes that this credit review process has worked well for decades, and there is no logical reason, nor has one been offered by Boston Gas, to require modification of this arrangement (<u>id.</u>).

# 3. Analysis and Findings

Based on record evidence, the Company has failed to demonstrate the financial risks that it would face as a result of the lack of performance by a supplier. If the supplier fails to deliver gas for customer use, the Company has established procedures, such as the Interim Sales Service ("ISS"), that would allow customers to continue receiving gas in such an event by paying the Company for the costs actually incurred in the provision of service (see Section X.C, below). Boston Gas has not identified additional circumstances under which it may be harmed. Therefore, the Department denies the Company's request for reconsideration. Based on this finding the Company's remaining request for clarification is moot.

# B. Disbursement of Penalty Revenues

#### 1. Introduction

In its Order, the Department found that the use of imbalance penalty revenues as a credit against the Company's low income accounts would remove all incentives for the Company to impose undue penalties. Order at 381. The Department further found that flowing a portion of the penalty revenues to firm sales customers would send incorrect commodity price signals to the customers receiving the credit, and directed Boston Gas to apply all of the imbalance penalty revenues as a credit to the Company's low-income accounts. Order at 381-382. In reaching this decision, the Department noted that it would

reexamine the treatment of the imbalance penalty revenues at the Company's filing of its initial adjustment under the PBR plan. Order at 382. The Company seeks reconsideration of the Department's directive.

# 2. Position of the Company

Boston Gas contends that in <u>Boston Gas Company</u>, D.P.U. 93-60 (1993), the Department found that monthly imbalance penalties are tied to gas costs and, therefore, should be flowed back to firm sales customers (Company Motion at 63, <u>citing D.P.U. 93-60</u>, at 482-483 (1993)). The Company states that it did not attempt to revise this treatment in this proceeding, and that such treatment is consistent with the Department's finding in D.P.U. 93-60. (<u>id.</u> at 63).

# 3. <u>Analysis and Findings</u>

The Department acknowledges that a fraction of the monthly balancing penalty revenues recovers gas commodity costs, and that we inadvertently failed to recognize this in our directives regarding the distribution of penalty revenues. The Department, therefore, grants in part the Company's motion for reconsideration and directs Boston Gas to return to its firm sales customers via the CGAC only the portion of the monthly penalty revenues that recovers gas costs incurred by Boston Gas. The Department directs the Company to credit the balance of the monthly penalty revenues to the low income customers.<sup>34</sup>

The Department notes that in its Order at 382, the Department stated that as the level of penalty revenues is uncertain, we may reexamine the treatment of balancing penalty revenues when the Company files its initial price change under the PBR. Order at 382.

# C. Interim Sales Service

#### 1. Introduction

In its Order, the Department directed the Company to apply its CGAC to ISS, unless the Company incurs additional costs that are attributable to the provision of ISS, in which case, the Company would charge its ISS customers the Daily Index. Order at 378. The Company is seeking clarification of the Department's directive.

# 2. <u>Position of the Company</u>

Boston Gas argues that the Department overlooked the fact that there may be instances in which the Company incurs costs attributable to the provision of ISS on days where the index is lower than the CGAC (Company Motion at 65). The Company argues that on such occasions, it would be inappropriate to charge the index price (id.). The Company, therefore, requests the Department to clarify its Order to state that in all instances, the Company shall charge the higher of the CGAC or the index for ISS (id.). No other party commented on this issue.

# 3. Analysis and Findings

Boston Gas maintains that it is seeking clarification of the Department's directive to apply the CGAC to ISS as established in the Order. However, the argument in the Company's Motion actually seeks reconsideration of the Department's decision on this matter. Accordingly, we will treat the Company's request as reconsideration.

In its Order, the Department found that ISS customers should bear all costs associated with the delivery of ISS. Order at 377. In accordance with this finding, the Company can charge the Daily Index only if the Company incurs costs that can be associated with the provision of ISS. The Department notes that if the Company's request were granted, the Company would be allowed to charge a rate for ISS service that could exceed the Company's

actual costs for providing this service. Accordingly, the Department denies the Company's request for reconsideration. The Company shall set the charge for the provision of ISS equal to the Company's CGAC. In the event that the Company incurs additional costs that are attributable to the provision of ISS, and the Daily Index exceeds the Company's CGAC, the Company will charge its ISS customers the Daily Index.

# D. Force Majeure

#### 1. Introduction

In its Order, the Department directed the Company to modify its <u>force majeure</u> proposal to provide that (1) breakage or accident to machinery or pipeline would not qualify as a <u>force majeure</u> event if it was a result of the Company's negligence or misconduct; and (2) in the event the Company is unable to restore service to a customer in 30 days, the customer (a) is immediately relieved of any further demand charge obligation, and (b) may, at its sole option, elect not to terminate the contract by providing Boston Gas with an additional 30 days to correct the service interruption. Order at 385. The Company seeks reconsideration and clarification of this directive.

# 2. Position of the Company

The Company argues that the Department's directive introduces an ambiguity by requiring customers to make an affirmative election to continue service after a <u>force majeure</u> (Company Motion at 66). Boston Gas proposes that the following section be removed from the T&C "... [customer] may at its sole option, elect not to terminate the contract by providing Boston Gas with an additional 30 days to correct the service interruption" (<u>id.</u>). Also Boston Gas seeks clarification that the intention of the Department was to relieve a customer of the obligation to pay demand charges only during the period the Company is unable to provide service (<u>id.</u>). The Company asks that the Department clarify its order to

indicate that customers shall be relieved of any further demand charge obligation only until such time as service is restored (Company Motion at 67). No other party commented on this issue.

# 3. Analysis and Findings

Pursuant to the Company's originally proposed T&C, a customer must provide thirty days' notice of its intent to terminate service for any reason, including a <u>force majeure</u> event. The Department finds that our directive to include language that allows a customer to notify the Company of its intent to continue service following a <u>force majeure</u> event is superfluous, and creates an unintended ambiguity in the terms and conditions of service. Accordingly, the Department grants the Company's request for clarification on this issue, and directs the Company to remove the language regarding a customer's option to elect to continue service after a <u>force majeure</u> event. Regarding the second aspect of the Company's request for clarification, the Department finds that the Order creates an ambiguity in the continued payment of demand charges by a customer affected by <u>force majeure</u>. Accordingly, the Department grants the Company's request for clarification on this issue, and directs Boston Gas to amend its T&C to indicate that a customer shall be relieved of any further demand charge obligation until such time as service is restored.

# XI. <u>SCHEDULES</u>

# XII. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That Boston Gas Company's Motion for Reconsideration be and hereby is GRANTED in part and DENIED in part; and it is

<u>FURTHER ORDERED</u>: That Boston Gas Company's Motion for Clarification be and hereby is GRANTED; and it is

<u>FURTHER ORDERED</u>: That Boston Gas Company's Motion for Recalculation be and hereby is GRANTED in part and DENIED in part; and it is

<u>FURTHER ORDERED</u>: That Boston Gas Company may file within seven days revised rates and schedules that are consistent with the directives of D.P.U. 96-50 (Phase I) as amended by this Order; and it is

<u>FURTHER ORDERED</u>: That Boston Gas Company shall comply with all directives contained herein.

By Order of the Department,
John B. Howe, Chairman
Janet Gail Besser, Commissioner

Appeal as to any matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).